Calendar No. 1007

99TH CONGRESS
2d Session

SENATE

REPORT
99-497

NATIONAL APPLIANCE ENERGY CONSERVATION ACT OF 1986

SEPTEMBER 27 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

Mr. MCCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 5465]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 5465) to amend the Energy Policy and Conservation Act with respect to energy conservation standards for appliances, having considered the same, reports favorably thereon with an amendment to the text and recommends that the Act, as amended, do pass.

The amendment is as follows:

Strike section 12 in its entirety.

PURPOSE

The purpose of H.R. 5465 is to reduce the Nation's consumption of energy and to reduce the regulatory and economic burdens on the appliance manufacturing industry through the establishment of national energy conservation standards for major residential appliances.

SUMMARY OF MAJOR PROVISIONS

There are two basic provisions to the measure: The establishment of Federal standards and the preemption of State standards.

Standards: Federal standards are established to take effect in 1988, 1990, or 1992, depending on the product, and are to remain in effect from 3 to 10 years, also depending on the product. After the 3 to 10 year "lock-in" period, DOE shall promulgate new standards for each product which may not be less than those established by the legislation. The 11 covered products are: refrigerators and

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freezers; room air conditioners; central air conditioners and heat pumps; water heaters; furnaces; washers; clothes washers; clothes dryers; direct heating equipment; kitchen ranges and ovens; and pool heaters. The standards are as strong as, or stronger than, any State standards currently in effect.

Preemption: In general, these national standards would preempt all State standards. However, States may petition DOE for a waiver from the Federal standards. Moreover, State standards enacted before January 8, 1987, and which become effective before January 3, 1988, are "grandfathered" by the bill and will remain effective until the appropriate Federal standard begins.

States may petition DOE to be waived from Federal preemption, but achieving the waiver is difficult. In order to receive a waiver a State must show that its regulation is needed to meet "unusual and compelling State and local interests". These interests are defined as being substantially different in nature or magnitude from those of the Nation generally. Furthermore, DOE may not grant a waiver if interested persons show that the State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of appliance products nationally. Nor may DOE grant a waiver if interested persons show that the State regulation is likely to result in the unavailability in the State of a product type or of products of a particular performance class, such as frost-free refrigerators. A waiver would become effective 3 years after it is granted by DOE, or after 5 years if the Secretary finds that the time is needed for redesign or retooling, etc.

In general, a State may not receive a waiver during the 3 to 10 year "lock-in" period for the Federal standards except if the State can show that an "energy emergency condition" exists within the State which imperils the health, safety and welfare of its residents.

The law would also restrict related State enacted performance-based building codes. They may be adopted by States only if they do not require the installation of covered products which have efficiencies exceeding the applicable Federal standard.

Because the State of California has already enacted standards and has been very active on this issue, special provisions are included in the bill relating to these State standards. In the case of the refrigerator/freezer standard, if DOE does not promulgate a final rule establishing a new Federal standard following the initial "lock-in" period ending January 1, 1993, then California's second tier standards (now to be effective on January 1, 1992) would go into effect on January 1, 1993, but only in California, without California receiving a waiver from Federal exemption.

Test procedures, enforcement, and reporting: H.R. 5465 has three other general provisions relating to test procedures, enforcement, and reporting. First, test procedures would not change from existing law unless DOE recommends their revision. In this case, H.R. 5465 requires that standards shall be adjusted so that revisions of the test procedures do not affect the actual stringency of the standards. Second, the bill would provide expeditious judicial relief should DOE fail to comply with statutory deadlines by stating that there is a Federal cause of action in such cases and that the courts are required to advance and expedite such cases. Section 336 of EPCA relating to administrative procedure and judicial review remains essentially intact except for technical changes and the addition of a new subsection to allow persons to seek declaratory judgments that State building codes do not comply with the Act. H.R. 5465 does not require a State to petition DOE to show that their building codes are consistent with the Act. Finally, as for reporting, DOE may require submission of reports by manufacturers but DOE would be required to use existing information when possible and to minimize industry's reporting burden.

BACKGROUND AND NEED

In 1975, Congress passed the Energy Policy and Conservation Act (EPCA) (Public Law 94-163) which required the Department of Energy (DOE) to mandate energy efficiency labeling of major residential appliances and to prescribe voluntary industry appliance efficiency improvements. In addition, EPCA authorized, but did not require, DOE to establish mandatory efficiency standards if necessary. In 1978, Congress enacted the National Energy Conservation Policy Act (NECPA) (Public Law 95-619) which amended EPCA to require that energy efficiency standards be established for each of 13 classes of appliances that are major consumers of energy. The standards, which would preempt State laws on appliance efficiency, were to "be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified."

The Department proceeded with rulemaking and in 1980 issued proposed standards for 8 of the 13 classes of covered appliances. In January of 1981, however, the Department suspended this process and announced in April 1982 a finding that no standards were economically justified. The DOE adoption of this "no-standard" standard precluded individual States from adopting their own efficiency standards due to the preemption provisions of EPCA.

The "no-standard" standard was immediately challenged in court by the Natural Resources Defense Council (NRDC) which sued to overturn the standards as thwarting the congressional intent that Federal standards be established. On July 16, 1985, the D.C. Circuit Court of Appeals issued a unanimous decision striking down the "no-standard" standards as ". . . contrary to law" and directing DOE to initiate a new rulemaking in accordance with the statutory intent of NECPA (*NRDC* v. *Herrington,* 768 F.2d 1355 (D.C. Cir. 1985)). That new rulemaking is still in progress.

It is currently estimated that approximately 18 percent of the Nation's energy is consumed by major home appliances such as furnaces, hot water heaters, clothes washers and dryers, air conditioners, refrigerators, stoves, etc. Since the energy price increases of the early 1970's, appliance efficiency has been the subject of national interest.

During the 1970's some States began enacting appliance efficiency standards on their own. NECPA provides that the Federal standards preempt State standards, except that States may petition DOE to grant a waiver from preemption if a State is able to show justification for its standards over those of DOE. While DOE adopted its policy of the "no-standard" standards, it also initiated a general policy of granting petitions from States requesting waivers from preemption. As a result, a system of separate State appliance standards has begun to emerge and the trend is growing.

Because of this trend, appliance manufacturers were confronted with the problem of a growing patchwork of differing State regulations which would increasingly complicate their design, production and marketing plans. Regulations in a few populous States could as a practical matter determine the product lines sold nationwide, even in States where no regulations existed. In an effort to resolve this problem the major appliance manufacturer associations began negotiations with the Natural Resources Defense Council in early 1986. At the end of July an agreement was reached and it is embodied in H.R. 5465, as introduced.

As passed by the House and referred to the Committee, H.R. 5465 had four non-technical differences from the Senate bill as introduced.

1. Television sets were added as a covered product for which the Secretary of energy may prescribe an energy conservation standard (section 322(a)(12) and section 325(i)(3)).
2. An energy conservation standard was established for the heating cycle of heat pumps (section 325(d)(2) and section 325(d)(3)(A)).
3. The energy conservation standards for furnances were modified to provide different treatment for furnances having an imput of less than 45,000 Btu's per hour (section 325(f)(B)).
4. A new section directing the Federal Energy Regulatory Commission to issue a final order in Docket No. RP 82-80 (section 12 was added to the bill).

LEGISLATIVE HISTORY

H.R. 5465 was introduced on August 15, 1986, as was the Senate companion measure, S. 2781. On September 10, 1986, the House Subcommittee on Energy Conservation and Power held a hearing on H.R. 5465 and reported the measure. On September 16, 1986, the Senate subcommittee on Energy Regulation and Conservation held a hearing on S. 2781, and the House Committee on Energy and Commerce reported H.R. 5465. H.R. 5465 passed the House of Representatives on September 22, 1986, and was referred to the Committee on Energy and Natural Resources on September 23, 1986.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Committee on Energy and Natural Resources, in open business session on September 24, 1986, by a unanimous vote of a quorum present, recommended that the Senate pass H.R. 5465, if amended as described herein.

The rollcall vote on reporting the measure was 18 yeas, 0 nay, as follows:

YEAS	NAYS
Mr. McClure	
Mr. Hatfield*	
Mr. Weicker*	
Mr. Domenici	

Mr. Wallop
Mr. Warner
Mr. Murkowski
Mr. Nickles
Mr. Hecht
Mr. Evans
Mr. Johnston
Mr. Bumpers
Mr. Ford
Mr. Metzenbaum*
Mr. Melcher*
Mr. Bradley*
Mr. Bingaman*
Mr. Rockefeller

* Indicates voted by proxy.

COMMITTEE AMENDMENT

The Committee ordered H.R. 5465 reported with one amendment, striking section 12 from the bill. It was the view of the Committee that section 12 was extraneous to the measure and should therefore be deleted.

In addition, the Committee agreed to adopt specific report language clarifying its intent with respect to small furnaces; those having an input of less than 45,000 Btu's per hour.

The Committee did not establish an initial standard for small gas furnaces in the statute and instead directed the DOE to establish the standard by rule at an annual fuel utilization efficiency of not less than 71 percent and not more than 78 percent. The Committee was concerned that setting a standard for small gas furnaces, at or near 78 percent (the level for larger gas furnaces), would increase their initial price. Because of the competition between small gas furnaces and electric resistance heating in some areas of the Nation, such a price increase for small gas furnaces could induce builders or consumers to switch to electric resistance heating. No specific standard for electric resistance heating is included in this bill.

Section 325(j) provides several safeguards against a standard for small gas furnaces being set at a level that results in a buying preference or significant switching from gas heating to electric resistance heating. The Secretary must consider the impact of any lessening of competition that is likely to result from the establishment of a standard for small furnaces. He must consider the economic impact of the standard on manufacturers and consumers. In addition, the Secretary must consider the total projected amount of energy savings likely to result from the establishment or revision of a standard for small furnaces.

Finally, section 325(j)(4) forbids a standard being set so as to result in the unavailability in the United States in any covered product type (or class) of performance charactristics, such as size or capacity. This paragraph, upon a sufficient showing, would forbid a standard for small gas furnaces being set at a level that would increase the price to the point that the product would be noncompetitive and that would result in minimal demand for the product.

SECTION-BY-SECTION ANALYSIS

Section 1 entitled the "National Appliance Energy Conservation Act" (the "Act").

Section 2 (Definitions) amends section 321(a) of the Energy Policy and Conservation Act ("EPCA") by adding definitions which are required to implement the specific standards provisions and other provisions added to EPCA by the Act. Section 2(a) defines "energy conservation standard" to include the performance standards set forth in the Act as well as the design requirements. Section 2(b) defines the technical terms that are used in the standards.

Section 3 (Coverage) amends section 332(a) of EPCA, listing the products that are covered by the Act. These products are: refrigerators; refrigerator-freezers; freezers; room air conditioners; central air conditioners and central air conditioning heat pumps; water heaters; pool heaters; direct heating equipment; furnaces; dishwashers; clothes washers; clothes dryers; television sets and kitchen ranges and ovens. Other consumer products may be regulated by the Secretary under existing section 322(b) of EPCA. Consumer products designed solely for use in recreational vehicles and other mobile equipment are not covered by the Act.

Section 4 (Test Procedures): Section 323 of EPCA is amended so as to conform with the establishment of specific standard levels in the Act. New section 323(a) states that all test procedures and related determinations prescribed or made by the Secretary with respect to any covered product, which are in effect on the date of enactment of the Act, remain in effect until the Secretary amends the test procedures and related determinations.

New section 323(b) authorizes the Secretary, with the assistance of the National Bureau of Standards, to amend existing test procedures, or to prescribe new test procedures for any covered product for which there are no test procedures. If the Secretary determines that a test procedure should be prescribed or amended, he shall promptly publish in the Federal Register proposed test procedures and afford interested parties an opportunity for comment. The Act extends the comment period to a minimum of 60 days (compared to 45 days under current law), and allows the Secretary to extend this comment period to as much as 270 days for good cause shown.

New section 323(c) modifies existing law regarding the restrictions on certain representations in writing or in broadcast advertisements about the energy characteristics of covered products.

New section 323(d) restates existing law with minor revisions regarding cases in which test procedures are not required.

New section 323(e) addresses the steps the Secretary must take to conform an energy conservation standard to an amended test procedure in the event a test procedure is amended.

Section 5 (Energy Conservation Standard): This section significanly amends existing Section 325 of EPCA by establishing the specific intitial energy conservation standards for the covered products (with the exception of televisions and small gas furnaces), and by requiring future rulemakings under mandatory schedules and revised criteria.

Under each subsection, a minimum duration period (i.e., the period between the effective dates of a revision of that standard) is prescribed for each intitial and revised standard. Manufacturers are also given specified lead times (i.e., the time between final publication of a revised standard by DOE and the effective date of the revised standard) within which to redesign their products to comply with new standards.

New section 325(a) contains the purpose of this section.

New section 325(b) contains the initial standard levels for refrigerators, refrigerator-freezers and freezers.

New sections 325(c) through 325(h) contain the initial standard levels applicable date for, respectively: room air conditioners (section 325(c)); central air conditioners and central air conditioning heat pumps (section 325(d)), water heaters, pool heaters, and direct heating equipment (section 325(e)); furnaces (section 325(f)); dishwashers, clothes washers and clothes dryers (section 325(g)); and kitchen ranges and ovens (section 325(h)).

New section 325(i), which essentially restates existing law, allows the Secretary in his discretion to promulgate standards for additional products, and specifies that a 5-year lead time is required between the publication of a final rule and the effective date of the standards. The subsection explicitly permits the Secretary to precribe an energy conservation standard for television sets but such a standard may not become effective with respect to products manufactured before January 7, 1992.

New section 325(j) establishes the criteria by which the Secretary may prescribe new or amended standards. The Secretary may not increase the maximum allowable energy use or decrease the minimum required energy efficiency of a covered product.

This section retains the requirements of existing law that energy conservation standards, including new or amended standards, shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is "technologically feasible" and "economically justified." This section also modifies the requirements of existing law regarding the Secretary's evaluation of the technological feasibility and economic justification of a proposed standard. In addition, the section creates a statutory rebuttable presumption that a new or amended standard level is economically justified if the Secretary makes certain findings.

New section 325(j)(4) also prohibits the Secretary from not prescribing a new or amended standard if he finds that the standard is likely to result in the unavailability in the United States in any covered product type or class of performance characteristics (including reliability), features, sizes, etc.

New subsection 325(k) contains procedures for prescribing new or amended standards. This section increases to 60 days (versus 45 days in current law) the public comment period on an advanced notice of proposed rulemaking and on proposed rules. It also provides that an amended or new final rule shall be published as soon as practicable but not less than 90 days after the publication of the proposed rule in the Federal Register. In other respects, this subsection essentially retains the requirements of current law.

Subsections (l), (m) and (o) are essentially indentical to subsections (f), (j) and (e), respectively, or current law.

Subsection (n) states that compliance with the performance standards either set forth in or required by section 325 shall be determined using the test procedures and compliance criteria of section 323.

Section 6 (Requirements of Manufacturers): Section 326(d) of EPCA is amended to add a requirement that the Secretary shall consider existing public sources of information including nationally-recognized certification programs of trade associations. The Secretary is also required to exercise his authority in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

Section 7 (Effect on Other Laws): Section 327 of EPCA is amended to create new preemption provisions, including criteria under which States can receive waivers from preemption.

Section 327(a), which essentially restates existing law, and provides that the Act supersedes State and local regulations regarding testing and labeling in certain cases.

New section 327(b) describes how preemption would apply during the period between the date of enactment of the Act and the effective dates of each Federal energy conservation standard. As a general principle, no State appliance efficiency regulations or requirements shall be applicable unless such regulations or requirement are prescribed or enacted before January 8, 1987, and are applicable to products before January 3, 1988. The section also lists other exceptions to preemption.

New section 327(c) states that on the effective date for each Federal energy conservation standard, that standard preempts State regulation, as provided under current law. This preemption is subject to the certain exceptions for building codes in new section 327(f), a State procurement regulation described in subsection (e), a regulation prohibiting constant burning pilot light for pool heaters, and any waiver from preemption granted by DOE upon State petition.

New section 327(d) allows States to file petitions seeking waiver of Federal preemption. This subsection provides new and more stringent criteria that a State must establish by a preponderance of the evidence in order to receive an exemption. The State is required to show that its regulation is needed to meet "Unusual and compelling" State or local interests.

New subsection (d) also provides that even if the State has made a showing of an unusual and compelling interest, the Secretary may not grant the requested waiver if he finds that interested persons have established by a preponderance of the evidence that such State regulation will significantly burden marketing, manufacturing, distribution, sale or servicing of the covered products or is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics that are substantially the same as those generally available in the State at the time of the Secretary's finding.

New subsection 327(d) further provides that any State regulation for which a waiver is granted shall apply to products manufactured three years after the rule granting such exemption is published in the Federal Register; however, the Secretary may lengthen the time to 5 years if he finds that additional time is necessary for retooling, redesign, etc.

In general, no State regulation, except as specified in subsection (b), may go into effect prior to the earliest possible effective date established by the Act for a revision of the energy conservation standard. However, a State may implement its regulation before that date if it can show by a preponderance of the evidence that an "energy emergency condition" exists within the State.

This subsection further provides that any interested person may file a petition requesting the Secretary to withdraw the rule issued with respect to a waiver petition.

Section 327(e) provides that State or local procurement standards more stringent than the Federal energy conservation standards are not superseded by the part. This provision is substantially the same as section 327(c) of current law.

New section 327(f) describes Federal preemption with regard to energy efficiency or energy use requirements regarding covered products contained in State and local building codes for construction. State and local building codes governing new construction typically regulate the energy efficiency of central heating and cooling equipment and water heaters. This section states that energy efficiency or use requirements contained in State or local building codes enacted or prescribed before January 8, 1987 are not preempted until the effective date of the Federal energy conservation standard. Such requirements adopted on or after January 8, 1987, are not preempted if they do not require the energy efficiency of a covered product to exceed the standard set forth in a "national voluntary consensus standard"; or in a grandfathered State standard or standard for which a State waiver has been obtained, whichever is higher. National voluntary consensus standards include those adopted by the Association of Air Conditioning, Heating and Refrigeration Engineers (ASHRAE), which sets energy efficiency standards using procedures stanctioned by the American National Standards Institute. ASHRAE standards are adopted by most States and local building codes.

Section 327(f)(3) describes the preemption of State or local building codes that exists after the effective date of the initial Federal standard for a covered product.

This paragraph describes the requirements that must be met in order for State or local building codes not to be preempted after such effective date. The paragraph, therefore, allows a State flexibility to implement performance-based building codes. Some of these codes authorize builders to adjust or trade off the efficiencies of the various building components so long as an energy objective is met.

The limited requirements of this paragraph are designed to ensure that performance-based building codes cannot circumvent the federal standard for a given covered product by effectively requiring the installation of such product with an efficiency exceeding the applicable Federal standards or State standards for which a waiver from preemption has been obtained. Finally, paragraph (4) states that a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code, unless the building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard and any applicable State standard that has been granted a waiver from preemption.

Subsection (g) states that no disclosure under this part creates an expressed or implied warranty under State or federal law regarding energy efficiency.

Section 8 (Citizen Status): Section 335(a) of EPCA is amended by adding a Federal cause of action against the Secretary for failing to comply with the nondiscretionary duty to issue a proposed or final rule according to the schedule in new Section 325 of EPCA. The courts are required to advance any such cases on the docket and to expedite the disposition of such cases. Jurisdiction is provided for the court to order appropriate relief, including relief that ensures the Secretary's compliance with future deadlines for that covered product.

Section 9 (Administrative Review and Judicial Review): Section 336 of EPCA remains essentially the same except for minor amendments. In addition, new subsection (c) states that jurisdiction is vested in Federal district courts over actions brought by any adversely affected person to determine whether a State or local government is complying with section 327 of this Act. This provision allows persons to seek declaratory judgments that State building codes do not comply with the criteria in the Act. The provision is necessary because the Act does not require States to petition DOE to show that their building codes comply with Section 327(f).

Section 10 (Annual Report): Section 338 of EPCA is amended by adding at the end a statement that nothing in the Section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 26, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5465, the National Appliance Energy Conservation Act of 1986, as ordered reported by the Senate Committee on Energy and Natural Resources, September 24, 1986.

H.R. 5465 establishes energy conservation standards for all categories of covered appliances. It provides a schedule for the Secretary of Energy to evaluate these standards to ensure that the maximum energy efficiency that is technologically feasible and economically justified is being achieved. This bill also provides for the preemption of state energy conservation appliance standards after the federal standards are in effect.

CBO estimates that H.R. 5465 will save approximately $500,000 in fiscal year 1987, because it postpones the technical and economic evaluation of the energy efficiency standards for central air conditioners and heat pumps until 1994. Under current law, the Department of Energy plans to begin these evaluations in 1987. We estimate no other direct impact on spending for fiscal years 1988 through 1991.

Enactment of this bill would not directly affect the budgets of state or local governments.

On September 25, 1986, the Congressional Budget Office prepared a cost estimate for H.R. 5465, a similar bill ordered reported by the House Committee on Energy and Commerce. The estimated budget impact of these two bills is the same.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,
Sincerely,

ROSEMARY MARCUSS
(For Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

Under existing law the Department of Energy is required to implement a Federal energy conservation program for home appliances. H.R. 5465 would amend existing law and decrease the number of regulations associated with certain aspects of this program while increasing those associated with others. On balance, however, the net effect of H.R. 5465 would be a reduction in regulations resulting from the existing program.

H.R. 5465 eliminates the need for certain regulations. For example, H.R. 5465 would substantially reduce the regulatory and economic burdens of the Federal appliance energy conservation program on the appliance manufacturing industry by reducing appliance regulation at the State level. The bill increases Federal preemption of State regulation. As a result, industry would avoid the burdens of a patchwork of conflicting and unpredictable State regulations. In addition, H.R. 5465 establishes energy conservation standards for appliance types which, without enactment of the measure, would be required to be established through more costly regulatory procedures conducted by the Department.

H.R. 5465 would, on the other hand, increase regulations in other areas by requiring greater State and local compliance with the Federal program. For example, H.R. 5465 would establish two procedures under which a State may petition for a waiver from Federal preemption of state appliance efficiency regulations. Currently, there is only one petition procedure. Additionally, H.R. 5465 would establish a new regulatory requirement that State building codes must comply with certain requirements of the Federal appliance energy conservation program. These compliance provisions of H.R. 5465 increase the regulatory burden for States which, under current law, are free to develop and promulgate building codes without regard to the Federal appliance energy conservation program.

Although it is not possible to quantify the areas in which regulations are increased or decreased by H.R. 5465, an evaluation of such areas clearly demonstrates that the net effect of the measure would be to reduce, rather than increase, regulations and economic costs. Moreover, the Congressional Budget Office estimates a net reduction in Federal Government costs over the next 3 fiscal years as a result of passage of this legislation. In addition, there is a strong consensus within the appliance manufacturing industry that the measure would reduce the industry's economic and regulatory burdens.

EXECUTIVE COMMUNICATIONS

The Committee has received no reports or communications relating to H.R. 5465. However, the views of the Administration were presented in testimony before the Subcommittee on Energy Regulation and Conservation and are available in the hearing record.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 5465, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ENERGY POLICY AND CONSERVATION ACT

* * * * * * *

TITLE III—IMPROVING ENERGY EFFICIENCY

* * * * * * *

PART B—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

DEFINITIONS

SEC. 321. (a) For purposes of this part:

(1) * * *

* * * * * * *

[(6) The term "energy efficiency standard" means a performance standard—

[(A) which prescribes a minimum level of energy efficiency for a covered product, determined in accordance with test procedures prescribed under section 323, and

[(B) which includes any other requirements which the Secretary may prescribe under section 325(c).]

(6) The term "energy conservation standard" means—

(A) a performance standard which prescribes a minimum level of energy efficiency or a maximum quantity of energy use for a covered product, determined in accordance with test procedures prescribed under section 323; or

(B) a design requirement for the products specified in paragraphs (6), (7), (8), (10), and (12) of section 322(a); and

includes any other requirements which the Secretary may prescribe under section 325(m).

* * * * * * *

(19) The term "AV" is the adjusted volume for refrigerator, refrigerator-freezers, and freezers, as defined in the applicable test procedure prescribed in section 323.

(20) The term "annual fuel utilization efficiency" means the efficiency descriptor for furnaces and boilers, determined using test procedures prescribed under section 323 and based on the assumption that all—

(A) weatherized warm air furnaces or boilers are located out-of-doors;

(B) warm air furnaces which are not weatherized are located indoors and all combustion and ventilation air is admitted through grills and ducts from the outdoors; and

(C) boilers which are not weatherized are located within the heated space.

(21) The term "central air conditioner" means a product, other than a packaged terminal air conditioner, which—

(A) is powered by single phase electric current;

(B) is air-cooled;

(C) is rated below 65,000 Btu per hour;

(D) is not contained within the same cabinet as a furnace the rated capacity of which is above 125,000 Btu per hour; and

(E) is a heat pump or a cooling only unit.

(22) The term "efficiency descriptor" means the ratio of the useful output to the total energy input, determined using the test procedures prescribed under section 323 and expressed for the following products in the following terms:

(A) For furnaces and direct heating equipment, annual fuel utilization efficiency.

(B) For room air conditioners, energy efficiency ratio.

(C) For central air conditioning and central air conditioning heat pumps, seasonal energy efficiency ratio.

(D) For water heaters, energy factor.

(E) For pool heaters, thermal efficiency.

(23) The term "furnance" means a product which utilizes only single-phase electric current, or single-phase electric current or DC current in conjunction with natural gas, propane, or home heating oil, and which—

(A) is designed to be the principal heating source for the living space of a residence;

(B) is not contained within the same cabinet with a central air conditioner whose rated cooling capacity is above 65,000 Btu per hour;

(C) is an electric central furnace, electric boiler, forced-air central furnace gravity central furnace, or low pressure steam or hot water boiler; and

(D) has a heat input rate of less than 300,000 Btu per hour for electric boilers and low pressure steam or hot water boilers and less than 225,000 Btu per hour for forced-air central furnaces, gravity central furnaces, and electric central furnaces.

(24) The terms "heat pump" or "reverse cycle" mean a product, other than a packaged terminal heat pump, which—

(A) consists of one or more assemblies;

(B) is powered by single phase electric current;

(C) is rated below 65,000 Btu per hour;

(D) utilizes an indoor conditioning coil, compressors, and refrigerant-to-outdoor-air heat exchanger to provide air heating; and

(E) may also provide air cooling, dehumidifying, humidifying circulating, and air cleaning.

(25) The term "pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure, including heating water in swimming pools, spas, hot tubs and similar applications.

(26) The term "thermal efficiency of pool heaters" means a measure of the heat in the water delivered at the heater outlet divided by the heat input of the pool heater as measured under test conditions specified in section 2.8.1 of the American National Standard for Gas Fired Pool Heaters, Z21.56–1986, or as may be prescribed by the Secretary.

(27) The term "water heater" means a product which utilizes oil, gas, or electricity to heat potable water for use outside the heater upon demand, including—

(A) storage type units which heat and store water at a thermostatically controlled temperature, including gas storage water heaters with an input of 75,000 Btu per hour or less, oil storage water heaters with an input of 105,000 Btu per hour or less, and electric storage water heaters with an input of 12 kilowatts or less;

(B) instantaneous type units which heat water but contain no more than one gallon of water per 4,000 Btu per hour of input, including gas instaneous water heaters with an input of 200,000 Btu per hour or less, oil instantaneous water heaters with an input of 210,000 Btu per hour or less, and electric instantaneous water heaters with an input of 12 kilowatts or less; and

(C) heat pump type units, with a maximum current rating of 24 amperes at a voltage no greater than 250 volts, which are products designed to transfer thermal energy from one temperature level to a higher temperature level for the purpose of heating water, including all ancillary equipment such as fans, storage tanks, pumps, or controls necessary for the device to perform its function.

(28) The term "weatherized warm air furnace or boiler" means a furnace or boiler designed for installation outdoors, approved for resistance to wind, rain, and snow, and supplied with its own venting system.

COVERAGE

[SEC. 322. (a) A consumer product is a covered product if it is one of the following types (or is designed to perform a function which is the principal function of any of the following types):

[(1) Refrigerators and refrigerator-freezers.

[(2) Freezers.

[(3) Dishwashers.

[(4) Clothes dryers.

[(5) Water heaters.

[(6) Room air conditioners.

[(7) Home heating equipment, not including furnaces.

[(8) Television sets.

[(9) Kitchen ranges and ovens.

[(10) Clothes washers.

[(11) Humidifiers and dehumidifiers.

[(12) Central air conditioners.

[(13) Furnaces.

[(14) Any other types of consumer product which the Secretary classifies as a covered product under subsection (b).]

COVERAGE

Sec. 322. (a) In General.—The following consumer products, excluding those consumer products designed solely for use in recreational vehicles and other mobile equipment, are covered products:

(1) Refrigerators, refrigerator-freezers, and freezers which can be operated by alterating current electricity, excluding—

(A) any type designed to be used without doors; and

(B) any type which does not include a compressor and condenser unit as an integral part of the cabinet assembly.

(2) Room air conditioners.

(3) Central air conditioners and central air conditioning heat pumps.

(4) Water heaters.

(5) Furnaces.

(6) Dishwashers.

(7) Clothes washers.

(8) Clothes dryers.

(9) Direct heating equipment.

(10) Kitchen ranges and ovens.

(11) Pool heaters.

(12) Television sets.

(13) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b).

[(b)(1)] (b) Special Classification of Consumer Product.—(1) The Administrator may classify a type of consumer product as a covered product if he determines that—

(A) classifying products of such type as covered products is necessary or appropriate to carry out the purposes of this Act, and

(B) average annual per-household energy use by products of such type is likely to exceed 100 kilowatt-hours (or it Btu equivalent) per year.

* * * * * * *

[TEST PROCEDURES

[Sec. 323. (a)(1) The Secretary shall, during the 30-day period which begins on the date of enactment of this Act, afford interested persons an opportunity to present written data, views, and arguments with respect to the types specified in paragraph (1) through (13) of section 32(a).

[(2) The Secretary shall direct the National Bureau of standards to develop test procedures for the determination of (A) estimated annual operating costs of covered products of the types specified in paragraph (1) through (13) of section 322(a), and (B) at least one other useful measure of energy consumption of such products which the Secretry determines is likely to assist consumers on making purchasing decisions.

[(3) The Secretary shall publish proposed test procedures with respect to all covered products of each of the types specified in paragraph (1) through (13) of section 322(a), and shall afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such proposed test procedures. Such comment period shall not be less than 45 days.

[(4) The Secretary shall prescribe test procedures for the determination of (i) estimated annual operating costs of all covered products of each of the types specified in paragraphs (1) through (13) of section 322(a), and (ii) at least one other measure of energy consumption of such products which the Secretary determines is likely to assist consumers in making purchasing decisions. Except as provided in paragraph (6), such test procedures shall be prescribed not later than January 31, 1978.

[(5) If the Secretary has classified a type of product as a covered product under section 322(b), the Secretary may, after affording interested persons an opportunity to comment, direct the National Bureau of Standards to develop, and may publish proposed test procedures for such type of covered product (or class thereof). The Secretary shall afford interested persons an opportunity to present oral and written data, views and arguments with respect to such proposed test procedures. Such comment period shall not be less than 45 days. The Secretary may thereafter prescribe test procedures in accordance with subsection (b) of this section with respect to such type or class of product, if the Secretary or the Commission determines that—

[(A) the application of subsection (c) to such type of covered product (or class thereof) will assist consumers in making purchasing decisions, or

[(B) labeling in accordance with section 324 will assist purchasers in making purchasing decisions.

[(6)(A) The Secretary may delay the prescription of test procedures under paragraph (4) for a type of covered product (or class thereof) if he determines that he cannot, within the applicable time period, prescribe test procedures applicable to such type (or class) which meet the requirements of subsection (b), and he submits to the Congress a report of such determination together with the reasons therefor, and also publishes such determination (and reasons) in the Federal Register. In any such case, he shall prescribe such test procedures as soon as practicable, but in no event later than 90 days after the date specified in paragraph (4).

[(B) The Secretary is not required to publish and prescribe test procedures under paragraphs (3) and (4) for a type of covered product (or class thereof) if he determines by rule that test procedures cannot be developed which meet the requirements of subsection (b) and publishes such determination in the Federal Register, together with the reasons thereof. For purposes of section 327, a determination under this subparagraph with respect to any type (or class) of covered product, while effective, shall have the same effect as would a standard prescribed for such type (or class) under section 325.

[(7)(A) In the case of—

[(i) any test procedure prescribed under this subsection; or

[(ii) any determination under paragraph (6) that a test procedure cannot be developed which meets the requirements of subsection (b);

the Secretary shall, not later than 3 years after the date of the enactment of this paragraph (and from time to time thereafter), conduct a reevaluation and, on this basis of such reevaluation, shall determine if such test procedure should be amended or such determination should be rescinded. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered products involved.

[(B) If the Secretary determines under subparagraph (A) that—

[(i) a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments, or

[(ii) a determination under paragraph (6) should be rescinded, he shall promptly publish notice thereof in the Federal Register,

and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.

[(b)(1) Any test procedures prescribed under this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

[(2) if the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a repsentative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such product during such cycle. The Secretary shall provide information to manufacturers respecting representative average unit costs of energy.

[(c)(1) Effective 180 days after a test procedure rule applicable to a covered product is prescribed under this section, no manufactrurer, distributor, retailer, or private labeler may make any representation—

[(A) in writing (including a representation on a label), or

[(B) in any broadcast advertisement,

respecting the energy consumption of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

[(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Commission with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Commission).]

TEST PROCEDURES

SEC. 323. (a) GENERAL RULE.—All test procedures and related determinations prescribed or made by the Secretary with respect to any covered product (or class thereof) which are in effect on the date of enactment of the National Appliance Energy Conservation Act of 1986 shall remain in effect until the Secretary amends such test procedures and related determinations under subsection (b).

(b) AMENDED AND NEW PROCEDURES.—(1)(A) The Secretary may amend test procedures with respect to any covered product if the Secretary determines that amended test procedures would more accurately or fully comply with the requirements of paragraph (3).

(B) The Secretary may, in accordance with the requirements of this subsection, prescribe test procedures for any consumer product classified as a covered product under section 322(b).

(C) The Secretary shall direct the National Bureau of Standards to assist in developing new or amended test procedures.

(2) If the Secretary determines, on his own behalf or in response to a petition by any interested person, that a test procedure should be prescribed or amended, the Secretary shall promptly publish in the Federal Register proposed test procedures and afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such procedures. The comment period shall not be less than 60 days and may be extended for good cause shown to not more than 270 days. In prescribing or amending a test procedure, the Secretary shall take into account such information as the Secretary determines relevant to such procedure, including technological developments relating to energy use or energy efficiency of the type (or class) of covered products involved.

(3) Any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct.

(4) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average use cycle or period of use, as determined by the Secretary, and from representative average unit costs of the energy needed to operate such product during such cycle. The Secretary shall provide information to manufacturers with respect to representative average unit costs of energy.

(c) RESTRICTION ON CERTAIN REPRESENTATIONS.—(1) No manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement,

with respect to the energy use or efficiency of a covered product to which a test procedure is applicable under subsection (a) or the cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) Effective 180 days after an amended or new test procedure applicable to a covered product is prescribed under subsection (b), no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label); or

(B) in any broadcast advertisement, with respect to energy use or efficiency of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such amended or new test procedures and such representation dairly discloses the results of such testing.

(3) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (2) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if the Secretary determines that the requirements of paragraph (2) would impose an undue hardship on such petitioner.

(d) CASE IN WHICH TEST PROCEDURE IS NOT REQUIRED.—(1) The Secretary is not required to publish and prescribe test procedures for a covered product (or class thereof) if the Secretary determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b)(3) and publishes such determination in the Federal Register, together with the reasons therefor.

(2) For purposes of section 327, a determination under paragraph (1) with respect to any covered product or class shall have the same affect as would a standard prescribed for a covered product (or class).

(e) AMENDMENT OF STANDARD.—(1) In the case of any amended test procedure which is prescribed pursuant to this section, the Secretary shall determine, in the rulemaking carried out with respect to prescribing such procedure, to what extent, if any, the proposed test procedure would alter the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure.

(2) If the Secretary determines that the amended test procedure will alter the measured efficiency or measured use, the Secretary shall amend the applicable energy conservation standard during the rulemaking carried out with respect to such test procedure. In determining the amended energy conservation standard, the Secretary shall measure, pursuant to the amended test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average of such energy efficiency or energy use levels determined under the amended test procedure shall constitute the amended energy conservation standard for the applicable covered products.

(3) Models of covered products in use before the date on which the amended energy conservation standard becomes effective (or revisions of such models that come into use after such date and have the same energy efficiency or energy use characteristics) that comply

with the energy conservation standard applicable to such covered products on the day before such date shall be deemed to comply with the amended energy conservation standard.

(4) The Secretary's authority to amend energy conservation standards under this subsection shall not affect the Secretary's obligation to issue final rules as described in section 325.

LABELING

SEC. 324. **[**(a)(1)**]** *(a) IN GENERAL.—(1)* The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1) **[**through (9)**]**, *(2), (4), (6), and (8) through (11)* of section 322(a), except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible.

* * * * * * *

(2) The Commission shall prescribe labeling rules under that section applicable to all covered products to each of the types specified in paragraphs **[**(10 through (13)**]** *(3), (5), and (7)* of section 322(a), except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph **[**(14)**]** *(12)* of section 322(a) (or a class thereof) if—

[(A) the Commission or the Secretary has made a determination with respect to such type (or a class thereof) under section 323(a)(5)(B),**]**

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) that labeling in accordance with this section will assist purchasers in making purchasing decisions,

(B) the Secretary has prescribed test procedures under section **[**323(a)(5)**]** *323(b)(1)(B)* for such type (or class thereof), and

(C) the Commission determines with respect to such type (or class thereof) that application of labeling rules under this section to such type (or class thereof) is economically and technologically feasible.

* * * * * * *

[(b)(1) Not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (14) of section 322(a) (or class thereof) is published under section 323(a), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).**]**

(b) RULES IN EFFECT; NEW RULES.—(1)(A) Any labeling rule in effect on the date of the enactment of the National Appliance Energy Conservation Act of 1986 shall remain in effect until amended, by rule, by the Commission.

(B) After the date of the enactment of the National Appliance Energy Conservation Act of 1986 and not later than 30 days after the date on which a proposed test procedure applicable to a covered product of any of the types specified in paragraphs (1) through (12) of section 322(a) (or class thereof) is prescribed under section 323(b), the Commission shall publish a proposed labeling rule applicable to such type (or class thereof).

* * * * * * *

(3) Not earlier than 45 days nor later than 60 days after the date on which test procedures are prescribed under section 323*(b)* with respect to covered products of any type (or class thereof) specified in paragraphs (1) through [(13)] *(11)* of section 322(a), the Commission shall prescribe labeling rules with respect to covered products of such type (or class thereof). Not earlier than 45 days after the date on which test procedures are prescribed under section 323*(b)* with respect to covered products of a type specified in paragraph [(14)] *(12)* of section 322(a), the Commission may prescribe labeling rules with respect to covered products of such type (or class thereof).

* * * * * * *

(5) The Commission may delay the publication of a proposed labeling rule, or the prescription of a labeling rule, beyound the dates specified in paragraph (1) or (3), if it determines that it cannot publish proposed labeling rules or prescribe labeling rules which meet the requirements of this section on or prior to the date specified in the applicable paragraph and publishes such determination in the Federal Register, together with the reasons therefor. In any such case, it shall publish proposed labeling rules or prescribe labeling rules for covered products of such type (or class thereof) as soon as practicable unless it determines (A) that labeling in accordance with this section is not economically or technically feasible, or (B) in the case of a type specified in paragraphs [(10) through (13)] *(3), (5), and (7)* of section 322(a), that labeling in accordance with this section is not likely to assist consumers in purchasing decisions. Any such determination shall be published in the Federal Register, together with the reasons therefor. This paragraph shall not apply to the prescription of a labeling rule with respect to covered products of a type specified in paragraph [(14)] *(12)* of section 322(a).

[(c)(1)] *(c) CONTENT OF LABEL.—(1)* Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type or class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 323), except that it—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible, the Commission shall require disclosure of a different useful measure of energy consumption (detemined in accordance with test procedures prescribed under section 323); and

(B) information respecting the range of estimated annual operating costs for covered products to which the rule applies; except that if the Commission requires disclosure under subparagraph (A) of a measure of engery consumption different from estimated annual operating cost, then the label shall disclose the range of such measure of energy consumption of covered products to which such rule applies.

* * * * * * *

[(d)**]** *(d) Effective Date.*—A rule under this section (or an amendment thereto) shall not apply to any covered product the manufacture of which was completed prior to the effective date of such rule or amendment, as the case may be.

[(e)**]** *(e) Study of Certain Products.*—The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in marketing purchasing decisions. The Secretary shall include the results of such study in the annual report under section 338.

(f) *Consultation.*—The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1) **[**or (2)**]**, it shall obtain the views of the Secretary and shall take such views into account in making such determination.

(g) *Other Authority of the Commission.*—Until such time as labeling rules under this section take effect with respect to a type or class of covered product, this section shall not affect any authority of the Commission under the Federal Trade Commission Act to require labeling with respect to energy consumption of such type or class of covered product.

[ENERGY EFFICIENCY STANDARDS

[Sec. 325. (a)(1) The Secretary shall, by rule; prescribe an energy efficiency standard for each type (or class) of covered products specified in paragraphs (1) through (13) of section 322(a).

[(2) The Secretary may, by rule, prescribe an energy efficiency standard for any type (or class) of covered products of a type specifed in paragraph (14) of section 322(a), if he determines, for the purposes of this section, that—

[(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-calendar-month period ending before such determination;

[(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-calendar-month period;

[(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

[(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufactures to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible to attain and is economically justified.

Not later than 2 years after the date of the enactment of this paragraph, the Secretary shall publish in the Federal Register a list of those types (and classes) of covered products which he considers may be subject to standards authorized to be prescribed under this paragraph. The Secretary may revise such list from time to time thereafter.

[(b) No standard for a type (or class) of covered products shall be prescribed pursuant to subsection (a) if—

[(1) a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of products, or

[(2) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under paragraph (2) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class) under this section.

[(c) Energy efficiency standards for each type (or class) of covered products prescribed under this section shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. Such standards may be phased in, over a period not in excess of 5 years, through the establishment of intermediate standards, as determined by the Secretary.

[(d) Before determining whether a standard is economically justified under subsection (c), the Secretary, after receiving any views and comments furnished with respect to the proposed standard under section 336, shall determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the follows factors:

[(1) the economic impact of the standard on the manufacturers and on consumers of the product subject to such standard,

[(2) the savings in operating costs thoughout the estimated average life of the covered products in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard,

[(3) the total projected amount of energy savings likely to result directly from the imposition of the standard,

[(4) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard,

[(5) the impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standard, [(6) the need of the Nation to conserve energy, and

[(7) any other factors the Secretary consideres relevant.

For purposes of paragraph (5), the Attorney General shall, not later than 60 days after publication of a proposed rule prescribing an energy efficiency standard, make a determination of the impact, if any, from any lessening of competition likely to result from such standard and transmit such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

[(e)(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any rule prescribing an energy efficiency standard under this section for any period which does not extend beyond the date which is 24 months after the date such rule is prescribed, if the Secretary finds that the annual gross revenues to such manufacturer for the preceding 12-month period from all its organizations (including the manufacture and sale of covered products) does not exceed $8,000,000. In making such finding in the case of any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

[(2) The Secretary may not exercise the authority granted under paragaph (1) with respect to any type (or class) of covered product subject to an energy efficiency standard established under this section unless he makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

[(f)(1) A rule prescribing an energy efficiency standard for a type (or class) of covered products shall specify a level of energy efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary, in his discretion determines that covered products within such group—

[(A) consume a different kind of energy from that consumed by other covered products within such type (or class), or

[(B) have a capacity or other performance-related feature which other products within such type (or class) do not have,

justifying a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In determining under this paragraph whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as he deems appropriate.

[(2) Any rule prescribing a higher or lower level of energy efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

[(g) In prescribing energy efficiency standards under this section, the Secretary shall give priority to the establishment of energy efficiency standards for types of products (or classes thereof) specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 322(a).

[(h)(1) Not later than 5 years after prescribing an energy efficiency standard under this section (and from time to time thereafter), the Secretary shall—

[(A) conduct a reevaluation in order to determine whether such standard should be amended in any manner, and

[(B) make, and publish in the Federal Register, such determination.

In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant including technological development, and the economic impact of the standard.

[(2) If the Secretary determines under paragraph (1) that a standard should be amended, he shall promptly publish a proposed rule incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.

[(i) Any energy efficiency standard shall be prescribed in accordance with the following procedures.

[(1) The Secretary shall (A) publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule is likely to apply, and (B) invite interested persons to submit, within 45 days after the date of publication of such advance notice, written presentation of data, views and arguments relevant to establishing such an energy efficiency standard.

[(2) An advance notice of proposed rulemaking under paragraph (1) shall be published by the Secretary—

[(A) in the case of types of covered products (or classes thereof) of the types specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 322(a), not later; than 30 days after a test procedure with respect to that type of covered products (or class thereof) has been prescribed, or 45 days after the date of the enactment of this subparagraph, whichever is later; and

[(B) in the case of types of covered products (or classes thereof) specified in paragraph (3), (8), (10), and (11), of section 322(a), not later than 30 days after a test procedure, with respect to that type (or class) of covered products has been prescribed, or one year after the date of the enactment of this subparagraph, whichever is later.

[(3) A proposed rule which prescribes an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of advance notice of proposed rulemaking for such type (or class). The Secretary shall determine the maximum improvement in energy efficiency that is technologically feasible for each type (or class) of covered products in prescribing such standard and if such standard is not designed to achieve such efficiency, the Secretary shall state in the proposed rule the reasons therefor. After the publication of such proposed rulemaking, the Secretary shall afford interested persons, in accordance with section 336, an opportunity to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

[(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (d)),

[(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible,

[(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate, and

[(D) whether such rule should prescribe a level of energy efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) to be subject to such standard.

[(4) A rule prescribing an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of the proposed rule under this section for such type (or class). Such rule shall be published as soon as practicable after such 60-day period, but in no event later than 2 years after publication of the advance notice. Such rule shall take effect not earlier than 180 days after the date of publication in the Federal Register. Such rule (or any amendment thereto) shall not apply to any covered products the manufacture of which was completed before the effective date of the rule or amendment as the case may be.

[(j) An energy efficiency standard prescribed under this section shall include test procedures prescribed in accordance with section 323, and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency specified in such standard.]

ENERGY CONSERVATION STANDARDS

SEC. 325. (a) PURPOSES.—The purposes of this section are to—

(1) provide Federal energy conservation standards applicable to covered products; and

(2) authorize the Secretary to prescribe amended or new energy conservation standards for each type (or class) of covered product.

(b) STANDARDS FOR REFRIGERATORS, REFRIGERATOR-FREEZERS, AND FREEZERS.—(1) The following is the maximum energy use allowed in kilowatt hours per year for the following products (other than those described in paragraph (2)) manufactured on or after January 1, 1990:

	Energy Standards Equations
Refrigerators and Refrigerator-Freezers with manual defrost	*16.3 AV+316*
Refrigerator-Freezers—partial automatic defrost	*21.8 AV+429*
Refrigerator-Freezers—automatic defrost with:	
Top mounted freezer without ice	*23.5 AV+471*
Side mounted freezer without ice	*27.7 AV+488*
Bottom mounted freezer without ice	*27.7 AV+488*
Top mounted freezer with through the door ice service	*26.4 AV+535*
Side mounted freezer with through the door ice	*30.9 AV+547*
Upright Freezers with:	
Manual defrost	*10.9 AV+422*
Automatic defrost	*16.0 AV+623*
Chest Freezers and all other freezers	*14.8 AV+223*

(2) The standards described in paragraph (1) do not apply to refrigerators and refrigerator-freezers with total refrigerated volume exceeding 39 cubic feet or freezers with total refrigerated volume exceeding 30 cubic feet.

(3)(A)(i) The Secretary shall publish a proposed rule, no later than July 1, 1988, to determine if the standards established by paragraph (1) should be amended. The Secretary shall publish a final rule no later than July 1, 1989, which shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1993. If such a final rule is not published before January 1, 1990, any amendment of such standards shall apply to products manufactured on or before January 1, 1995. Nothing in this subsection provides any justification or defense for a failure by the Secretary to comply with the nondiscretionary duty to publish final rules by the dates stated in this paragraph.

(ii)(I) If the Secretary does not publish a final rule before January 1, 1990, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, the regulations which established standards for such products and were promulgated by the California Energy Commission on December 14, 1984, to be effective January 1, 1992 (or any amendments to such standards that are not more stringent than the standards in the original regulations), shall apply in California to such products, effective beginning January 1, 1993, and shall not be preempted after such effective date by any energy conservation standard established in this section or prescribed, on or after January 1, 1990, under this section.

(II) If the Secretary does not publish a final rule before January 1, 1992, relating to the revision of the energy conservation standards for refrigerators, refrigerator-freezers and freezers, State regulations which apply to such products manufactured on or after January 1, 1995, shall apply to such products until the effective date of a rule issued under this section with respect to such products.

(B) After the publication of a final rule under subparagraph (A), the Secretary shall publish a final rule no later than every five years after the date of publication of the previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for the products described in paragraph (1).

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which the previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(c) Standards for Room Air Conditioners.—(1) The energy efficiency ratio of room air conditioners shall be not less than the following for products manufactured on or after January 1, 1990:

Product Class	*Ratio*
Without Reverse Cycle and With Louvered Sides:	
Less than 6,000 Btu	*8.0*
6,000 to 7,999 Btu	*8.5*
8,000 to 13,999 Btu	*9.0*
14,000 to 19,999 Btu	*8.8*
20,000 and more Btu	*8.2*
Without Reverse Cycle and Without Louvered Sides:	
Less than 6,000 Btu	*8.0*
6,000 to 7,999 Btu	*8.5*
8,000 to 13,999 Btu	*8.5*
14,000 to 19,999 Btu	*8.5*
20,000 and more Btu	*8.2*
With Reverse Cycle and With Louvered Sides	*8.5*
With Reverse Cycle, Without Louvered Sides	*8.0*

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established under paragraph (1) should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) After January 1, 1992, the Secretary shall publish a final rule no later than every five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for room air conditioners.

(C) Any amendment prescribed under subparagraph (B) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standards, the earliest date by which a previous amendment could have been effective;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(d) Standards for Central Air Conditioners and Heat Pumps.—(1) The seasonal energy efficiency ratio of central air conditioners and central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 10.0 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 9.7 for products manufactured on or after January 1, 1993.

(2) The heating seasonal performance factor of central air conditioning heat pumps shall be not less than the following:

(A) Split Systems: 6.8 for products manufactured on or after January 1, 1992.

(B) Single Package Systems: 6.6 for products manufactured on or after January 1, 1993.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (1) should be amended. Such rule shall contain such

amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1999. The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established under paragraph (2) shall be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 2002.

(B) The Secretary shall publish a final rule after January 1, 1994, and no later than January 1, 2001, to determine whether the standards in effect for central air conditioners and central air conditioning heat pumps should be amended. Such rule shall provide that any amemdment shall apply to products manufactured on or after January 1, 2006.

(C) After January 1, 2001, the Secretary shall publish a final rule—

(i) no earlier than five years and no later than seven years after the date of publication of the previous final rule; or

(ii) if the previous final rule did not amend the standards, five years after the date of publication of the previous final rule.

The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(D) Standards amended pursuant to subparagraph (C) shall apply only to products manufactured after a date which is—

(i) no earlier than five and no later than seven years after the effective date of the previous amendments; or

(ii) if the previous final rule did not amend the standard, five years after the earliest date by which a previous amendment could become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule prescribing such standard.

(e) STANDARDS FOR WATER HEATERS; POOL HEATERS; DIRECT HEATING EQUIPMENT.—(1) The energy factor of water heaters shall be not less than the following for products manufactured on or after January 1, 1990:

(A) Gas Water Heater: .62—(.0019×Rated Storage Volume)
(B) Oil Water Heater: .59—(.0019×Rated Storage Volume)
(C) Electric Water Heater: .95—(.00132×Rated Storage Volume)

(2) The thermal efficiency of pool heaters manufactured on or after January 1, 1990, shall not be less than 78 percent.

(3) The efficiencies of gas direct heating equipment manufactured on or after January 1, 1990, shall be not less than the following:

Wall	
Fan type	
Up to 42,000 Btu/hour	*73% AFUE*
Over 42,000 Btu/hour	*74% AFUE*
Gravity type	
Up to 10,000 Btu/hour	*59% AFUE*
Over 10,000 Btu/hour up to 12,000 Btu/hour	*60% AFUE*
Over 12,000 Btu/hour up to 15,000 Btu/hour	*61% AFUE*
Over 15,000 Btu/hour up to 19,000 Btu/hour	*62% AFUE*
Over 19,000 Btu/hour up to 27,000 Btu/hour	*63% AFUE*
Over 27,000 Btu/hour up to 46,000 Btu/hour	*64% AFUE*
Over 46,000 Btu/hour	*65% AFUE*
Floor	
Up to 37,000 Btu/hour	*56% AFUE*
Over 37,000 Btu/hour	*57% AFUE*

Room	
Up to 18,000 Btu/hour	*57% AFUE*
Over 18,000 Btu/hour up to 20,000 Btu/hour	*58% AFUE*
Over 20,000 Btu/hour up to 27,000 Btu/hour	*63% AFUE*
Over 27,000 Btu/hour up to 46,000 Btu/hour	*64% AFUE*
Over 46,000 Btu/hour	*65% AFUE*

(4)(A) The Secretary shall publish final rules no later than January 1 1992, to determine whether the standards established by paragraphs (1), (2) or (3) for water heaters, pool heaters, and direct heating equipment should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 2000, to determine whether standards in effect for such products should be amended. Such rule shall provide that any such amendment shall apply to products manufactured on or after January 1, 2005.

(C) After January 1, 2000, the Secretary shall publish a final rule—

(i) no earlier than every five years and no later than every ten years after the date of publication of the previous final rule; or

(ii) if the previous final rule did not amend the standards, five years in the date of publication of the previous final rule.

The Secretary shall determine in such whether to amend the standards in effect for such products.

(D) Such amended standards shall only apply to products manufactured after a date which is—

(i) no earlier than five years and no later than ten years after the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, five years after the earliest date by which the previous amendment could have become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule establishing such standard.

(f) Standards for Furnaces.—(1) Furnaces (other than furnaces designed solely for installation in mobile homes) manufactured on or after January 1, 1992, shall have an annual fuel utilization efficiency of not less than 78 percent, except that—

(A) boilers (other than gas steam boilers) shall have an annual fuel utilization efficiency of not less than 80 percent and gas steam boilers shall have an annual fuel utilization efficiency of not less than 68 percent; and

(B) the Secretary shall prescribe a final rule not later than January 1, 1989, establishing an energy conservation standard—

(i) which is for furnaces (other than furnaces designed solely for installation in mobile homes) having an input of less than 45,000 Btu per hour and manufactured on or after January 1, 1992; and

(ii) which provides that the annual fuel utilization efficiency of such furnaces shall be a specific percent which is not less than 71 percent and not more than 78 percent.

(2) Furnaces which are designed solely for installation in mobile homes and which are manufactured on or after September 1, 1990, shall have an annual fuel utilization efficiency of not less than 75 percent.

(3)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine whether the standards established by paragraph (2) for mobile home furnaces should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 1994.

(B) The Secretary shall publish a final rule no later than January 1, 1994, to determine whether the standards established by this subsection for furnaces (including mobile home furnaces) should be amended. Such rule shall provide that any amendment shall apply to products manufactured on or after January 1, 2002.

(C) After January 1, 1997 and before January 1, 2007, the Secretary shall publish a final rule to determine whether standards in effect for such products should be amended. Such rule shall contain such amendment, if any, and provide that any amendment shall apply to products manufactured on or after January 1, 2012.

(D) After the publication of the final rule described in subparagraph (C), the Secretary shall publish a final rule—

(i) no earlier than five years and later than ten yeas after the date of publication of the previous final rule; or

(ii) if the previous final rule did not amend the standards, five years after the date of publication of the previous final rule.

The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(E) Standards amended pursuant to subparagraph (D) shall apply only to products manufactured after a date which is—

(i) no earlier than five and no later than ten years after the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, five years after the earliest date by which the previous amendment could have become effective;

except that in no case may any amended standard apply to products manufactured within five years after publication of the final rule.

(g) STANDARDS FOR DISHWASHERS; CLOTHES WASHERS; CLOTHES DRYERS.—(1) Dishwashers manufactured on or after January 1, 1988, shall be equipped with an option to dry without heat.

(2) All rinse cycles of clothes washers shall include an unheated water option, but may have a heated water rinse option, for products manufactured on or after January 1, 1988.

(3) Gas clothes dryers shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1988.

(4)(A) The Secretary shall publish final rules no later than January 1, 1990, to determine if the standards established under this subsection for products described in paragraphs (1), (2), and (3) should be amended. Such rules shall provide that any amendment shall apply to products the manufacture of which is completed on or after January 1, 1993.

(B) After January 1, 1990, the Secretary shall publish a final rule no later than every five years after the date of publication of the

previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such products.

(C) Any such amendment shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendments; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such amended standard.

(h) STANDARDS FOR KITCHEN RANGES AND OVENS.—(1) Gas kitchen ranges and ovens having an electrical supply cord shall not be equipped with a constant burning pilot for products manufactured on or after January 1, 1990.

(2)(A) The Secretary shall publish a final rule no later than January 1, 1992, to determine if the standards established for kitchen ranges and ovens in this subsection should be amended. Such rule shall contain such amendment, if any, and provide that the amendment shall apply to products manufactured on or after January 1, 1995.

(B) The Secretary shall publish a final rule no later than January 1, 1997, to determine whether standards in effeci for such products should be amended. Such rule shall apply to products manufactured on or after January 1, 2000.

(C) After January 1, 1997, the Secretary shall publish a final rule no later than every five years after the date of publication of a previous final rule. The Secretary shall determine in such rule whether to amend the standards in effect for such product.

(D) Any amendment prescribed under subparagraph (C) shall apply to products manufactured after a date which is five years after—

(i) the effective date of the previous amendment; or

(ii) if the previous final rule did not amend the standard, the earliest date by which a previous amendment could have been in effect;

except that in no case may any amended standard apply to products manufactured within three years after publication of the final rule establishing such standard.

(i) STANDARD FOR OTHER COVERED PRODUCTS.—(1) The Secretary may prescribe an energy conservation standard for any type of (or class) of covered products of a type specified in paragraph (12) of section 322(a) if the requirements of subsections (i) and (k) are met and the Secretary determines that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt-hours (or its Btu equivalent) for any 12-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 324 to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible and economically justified.

(2) Any new or amended standard for covered products of a type specified in paragraph (12) of section 322(a) shall not apply to products manufactured within five years after the publication of a final rule establishing such standard.

(3) The Secretary may, in accordance with subsections (j) and (k), prescribe an energy conservation standard for television sets. Any such standard may not become effective with respect to products manufactured before January 1, 1982.

(j) CRITERIA FOR PRESCRIBING NEW OR AMENDED STANDARDS.—(1) The Secretary may not prescribe any amended standard which increases the maximum allowable energy use, or decreases the minimum required energy efficiency, of a covered product.

(2)(A) Any new or amended energy conservation standard prescribed by the Secretary under this section for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

(B)(i) In determining whether a standard is economically justified, the Secretary shall, after receiving views and comments furnished with respect to the proposed standard, determine whether the benefits of the standard exceed its burdens by, to the greatest extent practicable, considering—

(I) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard;

(II) the savings in operating costs throughout the estimated average life of the covered product in the type (or class) compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard;

(III) the total projected amount of energy savings likely to result directly from the imposition of the standard;

(IV) any lessening of the utility or the proformance of the covered products likely to result from the imposition of the standard;

(V) the impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

(IV) the need for national energy conservation; and

(VII) other factors the Secretary considers relevant.

(ii) For purposes of clause (i)(V), the Attorney General shall make a determination of the impact, if any, of any lessening of competition likely to result from such standard and shall transmit such determination, not later than 60 days after the publication of a proposed rule prescribing or amending an energy conservation standard, in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(iii) If the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure, there shall be a rebuttable presumption that such standard level is economically justified. A determination by the Secretary that such criterion is not met shall not be taken into consideration in the Secretary's determination of whether a standard is economically justified.

(3) The Secretary may not prescribe an amended or new standard under this section for a type (or class) of covered product of—

(A) for products other than dishwashers, clothes washers, clothes dryers, and kitchen ranges and ovens, a test procedure has not been prescribed pursuant to section 323 with respect to that type (or class) of product; or

(B) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 327, a determination under subparagraph (B) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class).

(4) The Secretary may not prescribe as amended or new standard under this section if the Secretary finds (and publishes such finding) that interested persons have established by a preponderance of the evidence that the standard is likely to result in the unavailability in the United States in any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities and volume that are substantially the same as those generally available in the United States at the time of the Secretary's finding. The failure of some types (or classes) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a standard for other types (or classes).

(k) PROCEDURE FOR PRESCRIBING NEW OR AMENDED STANDARDS.—Any new or amended energy conservation standard shall be prescribed in accordance with the following procedure:

(1) The Secretary—

(A) shall publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule may apply;

(B) shall invite interested persons to submit, within 60 days after the date of publication of such advance notice, written presentations of data, views, and arguments in response to such notice; and

(C) may identify proposed or amended standards that may be prescribed.

(2) A proposed rule which prescribes an amended or new energy conservation standard or prescribes not amended or no new standard for a type (or class) of covered products shall be published in the Federal Register. In prescribing any such proposed rule with respect to a standard, the Secretary shall determine the maximum improvement in energy efficiency or maxi-

mum reduction in energy use that is technologically feasible for each type (or class) of covered products. If such standard is not designed to achieve such efficiency or use, the Secretary shall state in the proposed rule the reasons therefor.

(3) After the publication of such proposed rulemaking, the Secretary shall, in accordance with section 336, afford interested persons an opportunity, during a period of not less than 60 days, to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) or matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (j)(2)) or will result in the effects described in subsection (j)(4);

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible;

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate; and

(D) whether such rule should prescribe a level of energy use or efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) that will be subject to such standard.

(4) A final rule prescribing an amended or new energy conservation standard or prescribing no amended or new standard for a type (or class) of covered products shall be published as soon as is practiable, but not less than 90 days, after publication of the proposed rule in the Federal Register.

(l) Special Rule for Certain Types of Classes of Products.—(1) A rule prescribing an energy conservation standard for a type (or class) of covered products shall specify a level of energy use or efficiency higher or lower than which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class); or

(B) have capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard from that which applies (or will apply) to other products within such type (or class).

In making a determination under this paragraph concerning whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider shall consider such factors as the utility to the consumer of such a feature, and such other factors as the Secretary deems appropriate.

(2) Any rule prescribing a higher or lower level of energy use or efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(m) Inclusion in Standards of Test Procedures and Other Requirements.—Any new or amended energy conservation standard prescribed under this section shall include where applicable, test procedures prescribed in accordance with section 323 and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency or maximum quantity of energy use specified in such standard.

(n) Determination of Compliance With Standards.—Compliance with, and performance under, the energy conservation standards (except for design standards authorized by this part) established in, or prescribed under this shall be determined using the test procedures and corresponding compliance criteria prescribed under section 323.

(o) Small Manufacturer Exemption.—(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any energy conservation standard established in or prescribed under this section for any period not longer than the 24-month period beginning on the date such rule becomes effective, if the Secretary finds that the annual gross revenues, of such manufacturer from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000 for the 12-month period preceding the date of the application. In making such finding with respect to any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy conservation standard under this section unless the Secretary makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

REQUIREMENTS OF MANUFACTURERS

Sec. 326. **[**(a)**]** *(a) In General.*—Each manufacturer of a covered product to which a rule under section 324 applies shall provide a label which meets, and is displayed in accordance with, the requiremens of such rule. If such manufacturer or any distributor, retailer, or private labeler of such product advertises such product in a catalog from which it may be purchased, such catalog shall contain all information required to be displayed on the label, except as otherwise provided by rule of the Commission. The preceding sentence shall not require that a catalog contain information respecting a covered product if the distribution of such catalog commenced before the effective date of the labeling rule under section 324 applicable to such product.

[(b)(1)**]** *(b) Notification.*—Each manufacturer of a covered product to which a rule under section 324 applies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

* * * * * * *

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard *established in or* prescribed under section 325 is in compliance with that standard, or

(B) by the Commission for purposes of ascertaining whether the information set out on a label of a product, as required under section 324, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

* * * * * * *

[(c) Each] *(c) DEADLINE.—Each manufacturer shall use labels reflecting the range data required to be disclosed under section 324(c)(1)(B) after the expiration of 60 days following the date of publication of any revised table of ranges unless the rule under section 324 provides for a later date. The Commission may not require labels be changed to reflect revised tables of ranges more often than annually.*

[(d) For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions by law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in same manner as it applies with respect to energy information obtained under section 11 of such Act.]

(d) INFORMATION REQUIREMENTS.—(1) For purposes of carrying out this part, the Secretary may require, under this part or other provision of law administered by the Secretary, each manufacturer of a covered product to submit information or reports to the Secretary with respect to energy efficiency or energy use of such covered product and the economic impact of any proposed energy conservation standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy conservation standards for such product and to insure compliance with the requirements of this part. In making any determination under this paragraph, the Secretary shall consider existing public sources

of information, including nationally recognized certification programs of trade associations.

(2) The Secretary shall exercise authority under this section in a manner designed to minimize unnecessary burdens on manufacturers of covered products.

(3) The provisions of section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as they apply with respect to energy information obtained under section 11 of such Act.

[EFFECTS ON OTHER LAW

[SEC. 327. (a) This part supersedes any State regulation insofar as such State regulation may now or hereafter provide for—

[(1) the disclosure of information with respect to any measure of energy consumption of any covered product—

[(A) if there is any rule under section 323 applicable to such covered product, and such State regulation requires testing in any manner other than that prescribed in such rule under section 323, or

[(B) if there is a rule under section 324 applicable to such covered product and such State regulation requires disclosure of information other than information disclosed in accordance with such rule under section 324; or

[(2) any energy efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product—

[(A) if there is a standard under section 325 applicable to such product, and such State regulation is not identical to such standard, or

[(B) if there is a rule under section 323 or 324 applicable to such product and such State regulation requires testing in accordance with test procedures which are not identical to the test procedures specified in such rule.

[(b)(1) If a State regulation is prescribed which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2) or (b)(2), then any person subject to such regulation may file a petition with the Secretary requesting that the Secretary prescribe a rule under this subsection which supersedes such State regulation in whole or in part. The Secretary, after consideration of the petition, the views of the affected State and the comments of any interested person, shall issue such requested rule only if the Secretary finds (and publishes such finding) that—

[(A) there is no significant State or local interest sufficient to justify such State regulation; and

[(B) such State regulation unduly burdens interstate commerce.

[(2) If a State regulation is prescribed after January 1, 1978, which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2), then such State regulation is superseded. Notwithstanding the requirement of the preceding sentence, such State may file a petition with the Secretary requesting a rule that such State regulation is not superseded pursuant to this paragraph. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds there is a significant State or local interest to justify such State regulations; except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

[(3) Notwithstanding subsection (a)(2), any State prescribing a State regulation which provides an energy efficiency standard or other requirement respecting energy use or energy efficiency for any type (or class) of covered products for which a Federal energy efficiency standard is applicable may file a petition with the Secretary requesting a rule that such regulation not be superseded. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds (and publishes such finding) that—

[(A) there is a significant State or local interest to justify such State regulation; and

[(B) such State regulation contains a more stringent energy efficiency standard than such Federal standard;

except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

[(4) The Secretary shall give notice of any petition filed under this subsection and afford interested persons a reasonable opportunity to make written comments thereon. The Secretary, within 6 months after the date any petition is filed, shall deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of such denial and the reasons for such denial.

[(5) The requirement of paragraph (2) shall not continue in effect after July 1, 1980, in the case of any type (or class) or covered products specified in paragraphs (1) through (13) of section 322(a).

[(c) Notwithstanding the provisions of subsection (a), any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such State standards are more stringent than the corresponding Federal standards.

[(d) For purposes of this section, the term "State regulation" means a law or regulation of a State or political subdivision thereof.

[(e) Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost, which is required to be made under the provisions of this part, shall not create an express or implied warranty under State or Federal law that such energy efficiency will be achieved, or that such energy use or estimated annual operating cost will not be exceeded, under conditions of actual use.]

EFFECT ON OTHER LAW

SEC. 327. (a) PREEMPTION OF TESTING AND LABELING REQUIREMENTS.—(1) Effective on the date of enactment of the National Appliance Energy Conservation Act of 1986, this part supersedes any State regulation insofar as such State regulation provides at any time for the disclosure of information with respect to any measure of energy consumption of any covered product if—

(A) such State regulation requires testing or the use of any measure of energy consumption or energy descriptor in any manner other than that provided under section 323; or

(B) such State regulation requires disclosure of information with respect to the energy use or energy efficiency of any covered product other than information required under section 324.

(2) For purposes of this section, the term "State regulation" means a law, regulation, or other requirement of a State or its political subdivisions.

(b) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARD BEFORE FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Effective on the date of enactment of the National Appliance Energy Conservation Act of 1986 and ending on the effective date of an energy conservation standard established under section 325 for any covered product, no State regulation, or revision thereof, concerning the energy efficiency or energy use of the covered product shall be effective with respect to such covered product, unless the State regulation or revision—

(1) was prescribed or enacted before January 8, 1987, and is applicable to products before January 3, 1988;

(2) is a State procurement regulation described in subsection (e);

(3) is a regulation described in subsection (f)(1) or is prescribed or enacted in a building code for new construction described in subsection (f)(2);

(4) is a regulation prohibiting the use in pool heaters of a constant burning pilot;

(5) is a regulation described in subsection (d)(5)(B) for which a waiver has been granted under subsection (d); or

(6) is a regulation concerning the energy efficiency or energy use of television sets.

(c) GENERAL RULE OF PREEMPTION FOR ENERGY CONSERVATION STANDARDS WHEN FEDERAL STANDARD BECOMES EFFECTIVE FOR A PRODUCT.—Except as provided in section 325(b)(3)(A)(ii) and effective on the effective date of an energy conservation standard established in or prescribed under section 325 for any covered product, no State regulation concerning the energy efficiency or energy use of such covered product shall be effective with respect to such product unless the regulation—

(1) is a regulation described in paragraph (2) or (4) of subsection (b);

(2) is a regulation which has been granted a waiver under subsection (d); or

(3) is in a building code for new construction described in subsection (f)(3).

(d) WAIVER OF FEDERAL PREEMPTIONS.—(1)(A) Any State with a State regulation which provides for any energy conservation standard or other requirement with respect to energy use or energy efficiency for any type (or class) of covered product for which there is a Federal energy conservation standard under section 325 may file a petition with the Secretary requesting a rule that such State regulation become effective with respect to such covered product.

(B) Subject to paragraph (2) through (5), the Secretary shall, within the period described in paragraph (2) and after consideration of the petition and the comments of interested persons, prescribe such rule if the Secretary finds (and publishes such finding) that the State has established by a preponderance of the evidence that such State regulation is needed to meet unusual and compelling State or local energy interests.

(C) For purposes of this subsection, the term "unusual and compelling State or local energy interests" means interests which—

(i) are substantially different in nature or magnitude than those prevailing in the United States generally; and

(ii) are such that the costs, benefits, burdens, and reliability of energy savings resulting from the State regulation make such regulation preferable or necessary when measured against the costs, benefits, burdens, and reliability of alternative approaches to energy savings or production, including reliance on reasonably predictable market-induced improvements in efficiency of all products subject to the State regulation.

The factors described in clause (ii) shall be evaluated within the context of the State's energy plan and forecast.

(2) The Secretary shall give notice of any petition filed under paragraph (1)(A) and afford interested persons a reasonable opportunity to make written comments, including rebuttal comments, thereon. The Secretary shall within the 6-month period beginning on the date on which any such petition is filed, deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain but no longer than one year after the date on which the petition was filed. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice, of, and the reasons for such denial.

(3) The Secretary may not prescribe a rule under the subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that such State regulation will significantly burden manufacturing, marketing, distribution, sale, or servicing of the covered product on a national basis. In determining whether to make such finding, the Secretary shall evaluate all relevant factors, including—

(A) the extent to which the State regulation will increase manufacturing or distribution costs of manufacturers, distributors, and others;

(B) the extent to which the State regulation will disadvantage smaller manufactures, distributors, or dealers or lessen competition in the sale of the covered product in the State;

(C) the extent to which the State regulation would cause a burden to manufactures to redesign and produce the covered

product type (or class), taking into consideration the extent to which the regulation would result in a reduction—

(i) in the current models, or in the projected availability of models, that could be shipped on the effective date of the regulation to the State and within the United States; or

(ii) in the current or projected sales volume of the covered product type (or class) in the State and the United States; and

(D) the extent to which the State regulation is likely to contribute significantly to a proliferation of State appliance efficiency requirements and the cumulative impact such requirements would have.

(4) The Secretary may not prescribe a rule under this subsection if the Secretary finds (and publishes such finding) that interested persons have established, by a preponderance of the evidence, that the State regulation is likely to result in the unavailability in the State of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the State at the time of the Secretary's finding, except that the failure of some classes (or types) to meet this criterion shall not affect the Secretary's determination of whether to prescribe a rule for other classes (or types).

(5) No final rule prescribed by the Secretary under this subsection may—

(A) permit any State regulation to become effective with respect to any covered product manufactured within three years after such rule is published in the Federal Register or within five years if the Secretary finds that such additional time is necessary due to the substantial burdens of retooling, redesign, or distribution needed to comply with the State regulation; or

(B) become effective with respect to a covered product manufactured before the earliest possible effective date specified in section 325 for the initial amendment of the energy conservation standard established in such section for the covered product; except that such rule may become effective before such date if the Secretary finds (and publishes such finding) that, in addition to the other requirements of this subsection the State has established, by a preponderance of the evidence, that—

(i) an energy emergency condition exists within the State which—

(I) imperils the health, safety, and welfare of its residents because of the inability of the State or utilities within the State to provide adequate quantities of gas or electric energy to its residents at less than prohibitive costs; and

(II) cannot be substantially alleviated by the importation of energy or the use of interconnection agreements; and

(ii) the State regulation is necessary to alleviate substantially such condition.

(6) In any case in which a State is issued a rule under paragraph (1) with respect to a covered product and subsequently a Federal energy conservation standard concerning such product is amended

pursuant to section 325, any person subject to such State regulation may file a petition with the Secretary requesting the Secretary to withdraw the rule issued under paragraph (1) with respect to such product in such State. The Secretary shall consider such petition in accordance with the requirements of paragraphs (1), (3), and (4), except that the burden shall be on the petitioner to show by a preponderance of the evidence that the rule received by the State under paragraph (1) should be withdrawn as a result of the amendment to the Federal standard. If the Secretary determines that the petitioner has shown that the rule issued by the State should be so withdrawn, the Secretary shall withdraw it.

(e) EXCEPTION FOR CERTAIN STATE PROCUREMENT STANDARDS.—Any State regulation which sets forth procurement standards for a State (or political subdivision thereof) shall not be superseded by the provisions of this part if such standards are more stringent than the corresponding Federal energy conservation standards.

(f) EXCEPTION FOR CERTAIN BUILDING CODE REQUIREMENTS.—(1) A regulation or other requirement enacted or prescribed before January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product.

(2) A regulation or other requirement, or revision thereof, enacted or prescribed on or after January 8, 1987, that is contained in a State or local building code for new construction concerning the energy efficiency or energy use of a covered product is not superseded by this part until the effective date of the energy conservation standard established in or prescribed under section 325 for such covered product if the code does not require that the energy efficiency of such covered product exceed—

(A) the applicable minimum efficiency requirement in a national voluntary consensus standard; or

(B) the minimum energy efficiency level in a regulation or other requirement of the State meeting the requirements of subsection (b)(1) or (b)(5),

whichever is higher.

(3) Effective on the effective date of an energy conservation standard for a covered product established in or prescribed under section 325, a regulation or other requirement contained in a State or local building code for new construction concerning the energy efficiency or energy use of such covered product is not superseded by this part if the code complies with all of the following requirements:

(A) The code permits a builder to meet an energy consumption or conservation objective for a building by selecting items whose combined energy efficiencies meet the objective.

(B) The code does not require that the covered product have an energy efficiency exceeding the applicable energy conservation standard established in or prescribed under section 325, except that the required efficiency may exceed such standard up to the level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

(C) The credit to the energy consumption or conservation objective allowed by the code of installing covered products having energy efficiencies exceeding such energy conservation standard established in or prescribed under section 325 or the efficiency level required in a State regulation referred to in subparagraph (B) is on a one-for-one equivalent energy use basis.

(D) If the code uses one or more baseline building designs against which all submitted building designs are to be evaluated and such baseline building designs contain a covered product subject to an energy conservation standard established in or prescribed under section 325, the baseline building designs are based on the efficiency level for such covered product which meets but does not exceed such standard or the efficiency level required by a regulation of that State for which the Secretary has issued a rule granting a waiver under subsection (d).

(E) If the code sets forth one or more optional combinations of items which meet the energy consumption or conservation objective, for every combination which includes a covered product the efficiency of which exceeds either standard or level referred to in subparagraph (D), there also shall be at least one combination which includes such covered product the efficiency of which does not exceed such standard or level by more than 5 percent, except that at least one combination shall include such covered product the efficiency of which meets but does not exceed such standard.

(F) The code does not arbitrarily attempt to promote or discourage use of any type of covered product.

(G) The energy consumption or conservation objective is specified in terms of an estimated total consumption of energy (which may be calculated from energy loss- or gain-based codes) utilizing an equivalent amount of energy (which may be specified in units of energy or its equivalent cost).

(H) The estimated energy use of any covered product permitted or required in the code, or used in calculating the objective, is determined using the applicable test procedures prescribed under section 323, except that the estimated energy use calculation may be adjusted to reflect the conditions of the areas where the code is being applied if such adjustment is based on the use of the applicable test procedures prescribed under section 323 or other technically accurate documented procedure.

(4)(A) Subject to subparagraph (B), a State or local government is not required to submit a petition to the Secretary in order to enforce or apply its building code or to establish that the code meets the conditions set forth in this subsection.

(B) If a building code requires the installation of covered products with efficiencies exceeding both the applicable Federal standard established in or prescribed under section 325 and the applicable standard of such State, if any, that has been granted a waiver under subsection (d), such requirement of the building code shall not be applicable unless the Secretary has granted a waiver for such requirement under subsection (d).

(g) NO WARRANTY.—Any disclosure with respect to energy use, energy efficiency, or estimated annual operating cost which is required to be made under the provisions of this part shall not create

an express or implied warranty under State or Federal law that such energy efficiency will be achieved or that such energy use or estimated annual operating cost will not be exceeded under conditions of actual use.

AUTHORITY TO OBTAIN INFORMATION

SEC. 329. (a) *IN GENERAL.*—For purposes of carrying out this part the Commission and the Secretary may each sign and issue subpenas for the attendance and testimony of witnesses and the production of relevent books, records, papers, and other documents, and may each administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpena served, upon any persons subject to this part, the Commission and the Secretary may each seek an order from the direct court of the United States for any district in which such person is found or resides or tansacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey such order is punishable by such court as a contempt thereof.

(b) *CONFIDENTIALITY.*—Any information submitted by any person to the Secretary or the Commission under this part shall not be considered energy information as defined by section 11(e)(1) of the Energy Supply and Environmental Coordination Act of 1974 for purposes of any verification examination authorized to be conducted by the Comptroller General under section 501 of this Act.

* * * * * * *

PROHIBITED ACTS

SEC. 332. (a) *IN GENERAL.*—It shall be unlawful—

(1) * * *

* * * * * * *

(5) for any manufacturer or private labeler to distribute in commerce any new covered product which is not in comformity with an applicable [energy efficiency standard prescribed under] *energy conservation standard established in or prescribed under* this part.

(b) *DEFINITION.*—For purposes of this section, the term "new covered product" means a covered product the title of which has not passed to a purchaser who buys such product for purposes other than (1) reselling such product, or (2) leasing such product for a period in excess of one year.

ENFORCEMENT

SEC. 333. (a) *IN GENERAL.*—Except as provided in subsection (c), any person who knowingly violates any provision of section 332 shall be subject to a civil penalty of not more than $100 for each violation. Such penalties shall be assessed by the Commission, except that penalities for violations of section 332(a)(3) which relate to requirements prescribed by the Secretary, violations of section 332(a)(4) which relate to requests of the Secretary under section

326(b)(2), or violations of section 332(a)(5) shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of paragraph (1), (2), or (5) of section 332(a) shall constitute a separate violation with respect to each covered product, and each day of violation of section 332(a)(3) or (4) shall constitute a separate violation.

(b) *DEFINITION.*—As used in subsection (a), the term "knowingly" means (1) the having of actual knowledge, or (2) the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care.

[(c) It**]** *(c) SPECIAL RULE.—It* shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 5(a)(1) of the Federal Trade Commission Act) for any person to violate section 323(c), except to the extent that such violation is prohibited under the provisions of section 332(a)(1), in which case such provisions shall apply.

[(d)(1)**]** *(d) PROCEDURE FOR ASSESSING PENALTY.—(1)* Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

* * * * * * *

CITIZEN SUITS

SEC. 335. (a) Except as otherwise provided in subsection (b), any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part; **[**or**]**

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary**[**.**]***; or*

(3) the Secretary in any case in which there is an alleged failure of the Secretary to comply with a nondiscretionary duty to issue a proposed or final rule according to the schedules set forth in section 325.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be. *The courts shall advance on the docket, and expedite the disposition of, all causes filed therein pursuant to paragraph (3) of this subsection. If the court finds that the Secretary has failed to comply with a deadline established in section 325, the court shall have jurisdiction to order appropriate relief, including relief that will ensure the Secretary's compliance with future deadlines for the same covered product.*

(b) *Limitation.*—No action may be commenced—

* * * * * * *

(c) *Right to Invervene.*—In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

(d) *Award of Costs of Litigation.*—The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) *Preservation of Other Relief.*—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

(f) *Compliance in Good Faith.*—For purposes of this section, if a manufacturer or private labeler complied in good faith with a rule under this part, then he shall not be deemed to have violated any provision of this part by reason of the alleged invalidity of such rule.

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[ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

[Sec. 336. (a) Rules under sections 323, 324, 325(a), 327(b), or 328 shall be prescribed in accordance with section 553 of title 5, United States Code, except that—

[(1) interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule, and

[(2) in the case of a rule under section 325(a), the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

[(A) other interested persons who have made oral presentations under paragraph (1), and

[(B) employees of the United States who have made written or oral presentations,

with respect to disputed issues of material fact. Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

A transcript shall be kept of any oral presentations made under this subsection.

[(2) Subsection (c) and (d) of section 18 of the Federal Trade Commission Act shall apply to rules under section 325 (other than subsections (a) (1), (2), and (3)) to the same extent that such subsections apply to rules under section 18(a)(1)(B) of such Act.

[(b)(1) Any person who will be adversely affected by a rule prescribed under section 323, 324, or 325 when it is effective may, at any time prior to the sixtieth day after the date of such rule is prescribed, file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court of the agency which prescribed the rule. Such agency thereupon shall file in the court the written submission to, and transcript of, the proceedings on which the rule was based as provided in section 2112 of title 28, United States Code.

[(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and grant appropriate relief as provided in such chapter. No rule under section 323, 324, or 325 may be affirmed unless supported by substantial evidence.

[(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

[(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

[(c)(1) Titles IV and V of the Department of Energy Organization Act (42 U.S.C. 7191 et seq.) shall not apply with respect to the procedures under this part.

[(2) The procedures applicable under this part shall not—

[(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

[(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes in whole or in part, the procedures of this part.]

ADMINISTRATIVE PROCEDURE AND JUDICIAL REVIEW

SEC. 336. (a)(1) in addition to the requirements of section 553 of title 5, United States Code, rules prescribed under section 323, 324, 325, 327, or 328 of this part shall afford interested persons an opportunity to persent written and oral data, views, and agruments with respect to any proposed rule.

(2) In the case of a rule prescibed under section 325, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations; and

(B) employees of the United States who have made written or oral presentations with respect to disputed issues of material fact.

Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

(3) A transcript shall be kept of any oral presentations made under this subsection.

(b)(1) Any person who will be adversely affected by a rule prescribed under section 323, 324, or 325 may, at any time within 60 days after the date on which such rule is prescribed, file a petition with the United States court of appeals for the circuit in which such person resides or has his principal place of business, for judi-

cial review of such rule. A copy of the petition shall be transmitted by the clerk of the court to the agency which prescribed the rule. Such agency shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based, as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5, United States Code, and to grant appropriate relief as provided in such chapter. No rule under section 323, 324, or 325 may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein); or

(B) be considered to be suspended by any other provision of law unless such other provision does so in specific terms by referring to this part and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(c) Jurisdiction is vested in the Federal district court of the United States over actions brought by any adversely affected person to determine whether a State or local government is complying with the requirements of this part.

* * * * * * *

ANNUAL REPORT

SEC. 338. The Secretary shall report to the Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this part and on the energy savings impact of this part. Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part, during such period but which were not taken together with the reasons therefor. *Nothing in this section provides a defense or justification for a failure by the Secretary to comply with a nondiscretionary duty as provided for in this part.*

AUTHORIZATION OF APPROPRIATIONS

SEC. 339. (a) *AUTHORIZATIONS FOR THE SECRETARY.*—There are authorized to be appropriated to the Secretary not more than the following amounts to carry out his responsibilities under the part—

* * * * * * *

(b) *Authorizations for the Commission.*—There are authorized to be appropriated to the Commission not more than the following to carry out its responsibilities under this part—

* * * * * * *

(c) *Other Authorizations.*—There are authorized to be appropriated to the Secretary to be allocated not more than the following amounts—

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Calendar No. 1030

99TH CONGRESS
2d Session

SENATE

REPORT
99-507

CLARIFYING THE STATUS OF SUBMERGED LANDS IN THE STATE OF ALASKA

OCTOBER 1 (legislative day, SEPTEMBER 24), 1986.—Ordered to be printed

Mr. McCLURE, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany S. 485]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 485), to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation, having considered the same, reports favorably thereon with an amendment to the text and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike all after the enacting clause and insert in lieu thereof:

That section 901 of the Alaska National Interest Lands Conservation Act (94 Stat. 2430; Public Law 96-487) is amended by striking out the text of such section and inserting in lieu thereof:

"SEC. 901. (a)(1) Except as provided in paragraph (2), whenever the Secretary surveys land selected by a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act, lakes, rivers, and streams shall be meandered in accordance with the principles in the Bureau of Land Management, 'Manuals of Surveying Instructions' (1973).

"(2) If title to the lands beneath navigable waters of a lake less than fifty acres in size or a river or stream less than three chains in width did not vest in the State pursuant to the Submerged Lands Act, such lake, river, or stream shall not be meandered.

"(3) The Secretary is not required to determine the navigability of a lake, river, or stream which because of its size or width is required to be meandered or to compute

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the acreage of the land beneath such lake, river, or stream or to describe such lands in any conveyance document.

"(4) Nothing in this subsection shall be construed to require ground survey or monumentation of meanderlines.

"(b)(1) Whenever, either before or after the date of enactment of this section, the Secretary conveys land to a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act which abuts or surrounds a meanderable lake, river, or stream, all right, title, and interest of the United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint, as the case may be, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. The right, title, and interest vested in a Native or Native Corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

"(2) The specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the document entitled, 'Memorandum of Agreement between the United States Department of the Interior and the State of Alaska' dated March 28, 1984, signed by the Secretary and the Governor of Alaska and submitted to the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, are hereby incorporated in this section and are ratified as to the duties and obligations of the United States and the State, as a matter of Federal law.

"(c)(1) The execution of an interim conveyance or patent, as appropriate, by the Bureau of Land Management which conveys an area of land selected by a Native or Native Corporation which includes, surrounds, or abuts a lake, river, or stream, or any portion thereof, shall be the final agency action with respect to a decision of the Secretary of the Interior that such lake, river, or stream, is or is not navigable, unless such decision was validly appealed to an agency or board of the Department of the Interior on or before December 2, 1980.

"(2) No agency or board of the Department of the Interior other than the Bureau of Land Management shall have authority to determine the navigability of a lake, river, or stream within an area selected by a Native Claims Settlement Act or this Act unless a determination by the Bureau of Land Management that such lake, river, or stream, is or is not navigable, was validly appealed to such agency or board on or before December 2, 1980.

"(3) If title to land conveyed to a Native Corporation pursuant to the Alaska Native Claims Settlement Act or this Act which underlies a lake, river, or stream is challenged in a court of competent jurisdiction and such court determines that such land is owned by the Native Corporation, the Native Corporation shall be awarded a money judgment against the plaintiffs in an amount equal to its costs and attorney's fees, including costs and attorney's fees incurred on appeal.

"(d) For the purposes of this section, the terms 'navigable' and 'navigability' means navigable for the purpose of determining title to lands beneath navigable waters, as between the United States and the several States pursuant to the Submerged Lands Act and section 6(m) of the Alaska Statehood Act.".

SEC. 2. Nothing in this Act shall amend or alter any land exchange agreement to which the United States is a party, or any statute, including but not limited to the Act of January 2, 1976 (89 Stat. 1151) and section 506(c) of the Alaska National Interest Lands Conservation Act (94 Stat. 2409), that authorizes, ratifies or implements such an agreement.

PURPOSE OF THE MEASURE

S. 485, as reported, would amend section 901 of the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) to eliminate the provisions relating to the 6-year statute of limitations for the filing of civil actions concerning (1) the ownership by a Native corporation or Native group of a parcel of submerged land conveyed to such corporation or group pursuant to either ANILCA or the Alaska Native Claims Settlement Act of 1971 (ANCSA), or (2) a decision by the Secretary of the Interior that the water covering such parcel is not navigable; and the 7-year limitation if the interim conveyance or patent was executed before the date of enactment of ANILCA. It would also repeal other provisions of section 901.

BACKGROUND AND NEED

Since the passage of the Act of May 18, 1796, it has been the law that the title to lands bordering on nonnavigable streams extends to the center of the streams. Further, in 1891, in the case of *Hardin* v. *Jordan,* 140 U.S. 371, the Supreme Court decided that the title of grantees of lands bordering on nonnavigable lakes or ponds extends to the center of the lake or pond. The Department of the Interior has applied these principles consistently to land conveyances in both the lower 48 States and Alaska, except as to selections by Native Corporations under the Alaska Native Claims Settlement Act.

Thus, when a State or other entity, other than the State of Alaska or a Native corporation, was entitled to select a certain amount of land which included land covered by nonnavigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated. This long-standing policy is reflected in the Bureau of Land Managements (BLM) "Manual of Surveying Instructions" (Manual), which includes instructions for meandering rivers and lakes and calculating the acreage of franctional sections. The Manual provides that navigable bodies of water, as well as all lakes equal to or larger than 50 acres~~, and~~ streams and rivers equal to or wider than three chains (198 feet), are to be excluded from the calculation of public lands.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select 103.35 million acres of vacant, unappropriated, unreserved public land. That Act also provided that the State took title to submered lands beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other law. However, section 6(g) of the Alaska Statehood Act provides that where lands selected by the State are unsurveyed, the Secretary of the Interior is to survey the exterior boundaries of the selected area and issue a patent for such selected area in terms of the exterior boundary survey. In accordance with this instruction BLM surveyed only the perimeter of the State's selections and did not meander the submerged lands within the selected areas.

Under ANCSA, Native corporations were entitled to select 44 million acres of public lands. In this context, the Department of the Interior interpreted the term "public lands" to include submerged lands beneath nonnavigable waters. A final determination as to the navigability of a body of water can only be made by a court, and such judicial determinations have never been issued on the overwhelming majority of lakes and rivers in Alaska. Thus, BLM, in its efforts to convey the lands that have been selected by the State and the Native Corporations, has been required to make initial determinations as to the navigability of hundreds of lakes and rivers. If BLM found that a body of water within a Native selection was navigable, the land underlying the water body was held to belong to the State and was not charged against the Native corporation's entitlement. If the water body was found to be nonnavigable, the selected lands were conveyed to the Native corporation and charged against its entitlement—an apparent contradiction of the Department's longstanding policy in the lower 48 States. Similarly, when the State made selections of lands containing nonnavigable bodies of water, BLM charged the submerged lands against the State's entitlement.

As a result, the navigability and nonnavigability of water bodies and the chargeability of submerged land have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In particular, the State believes that many of the submerged lands that have been conveyed to the Native corporations should have been recognized as belonging to the State. Native corporations have found it necessary to challenge the initial navigability decisions to insure that they will not be deprived of any portion of their entitlements. Further, the State and the Native corporations have long contended that the Manual should be followed when lands in Alaska are conveyed. The Native corporations have also asserted that the they should not be charged for federally-owned submerged lands which they have selected.

In an attempt to resolve submerged land inequities, the involved parties negotiated a change in policy concerning the chargeability of submerged lands. Although the Department's current policy concerning the chargeability of submerged lands has eliminated many of the problems associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved. At issue are BLM's navigability decisions and their effect on hundreds of conveyances made to Native corporations and the State.

Some problems concerning navigability decisions were addressed by the Congress in section 901 of ANILCA, which established time frames and procedures for challenging such decisions. Specifically, section 901(a), as amended, provides that the ownership by a Native corporations or Native group of a parcel of submerged land conveyed to such corporation or group pursuant to either ANILCA or ANCS, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within six years after the date of the execution of the involved conveyance, if the conveyance was executed after December 2, 1980, the date of enactment of ANILCA. A 7-year statute of limitations applies if the conveyance or patent was executed before the date of enactment of ANILCA.

The original 5-year of limitations established by section 901(a), as originally enacted, would have run on December 2, 1985. Enactment of Public Law 99–258 extended the statute to six years. Thus, the State must either challenge all the conveyances that are subject to the 6-year statute of limitations or risk the possibility of being precluded from challenging some of the conveyances and decisions. S. 485, among other things, would repeal this provision. The United States, the State of Alaska, and the Natives have always assumed that the 12-year statute of limitations in the Quiet Title Act has always applied, and will continue to apply after the repeal of section 901(a).

LEGISLATIVE HISTORY

S. 485 was introduced by Senators Murkowski and Stevens on February 20, 1985. The Subcommittee on Public Lands, Reserved Water and Resource Conservation held a hearing on S. 485 on August 4, 1986.

At a business meeting on September 24, 1986, the Senate Committee on Energy and Natural Resources ordered S. 485, as amended, favorably reported.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 24, 1986, by unanimous voice vote of a quorum present recommends that the Senate pass S. 485, if amended, as described herein.

COMMITTEE AMENDMENT

The amendment in the nature of a substitute does not change the two main purposes of the bill which are: to validate the application of Department of the Interior policy that the same survey standards should apply to the State of Alaska and Alaska Natives as have historically applied to the rest of the United States; and to repeal the statute of limitations found in the Alaska National Interest Lands Conservation Act (ANILCA).

This amendment also adds new language to clear up ambiguities in S. 485, as introduced. These are as follows:

> Clarifies that the BLM Survey manual applies retroactively to the State and the Native Corporations conveyances.
>
> Expands upon the exemptions contained in S. 485 to clarify that the legislation shall not change Section 506(c) of ANILCA relating to the Shee Atika land conveyance. Additionally, the bill shall not affect any negotiated land exchange agreements that varied survey requirements or land entitlements, in which the United States is a party, that were executed prior to enactment of this bill.

The original text of S. 485, strikes and inserts at the appropriate places on ANILCA. The amendment in the nature of a substitute would change the structure of S. 485 by striking all of Section 901 of ANILCA and replacing it with the provisions of this amendment.

SECTION-BY-SECTION ANALYSIS

Section 1

This section substitutes a new section 901 of ANILCA for the section 901 enacted on December 2, 1980. In addition to repealing the statutes of limitation in the original section 901(a), the new section 901 is intended to operate as follows:

Subsection (a)(1). This paragraph requires the Bureau of Land Management (BLM) to survey the public domain in Alaska, meander lakes, rivers, streams and other bodies of water, and convey "public lands" to Alaska Natives, Native corporations and the State of Alaska pursuant to the Alaska Native Claims Settlement

Act and the Alaska Statehood Act in the manner set forth in the 1973 edition of the BLM "Manual of Surveying Instructions."

(2) This paragraph establishes a statutory exception to the survey and conveyance procedure described in paragraph (1). Even if a lake less than 50 acres, or a river, stream or other body of water less than 198 feet wide was navigable at the time the State of Alaska entered the union, if title to the lake, river, stream or other body of water did not vest in the State of Alaska at statehood, such lake, river, stream or other body of water shall not be meandered.

(3) This paragraph clarifies that if a lake, river, stream or other body of water is required to be meandered, BLM is not required to expend the time, money and resources necessary to make an administrative determination as to whether the lake, river, stream or other body of water is or is not navigable, or whether title to the land beneath the lake, river, stream or other body of water did or did not vest in the State of Alaska at statehood.

(4) This paragraph clarifies that section 13(a) of ANCSA is unaffected by this Act. Although BLM must meander lakes, rivers, streams and other bodies of water in the manner set forth in the "Manual of Surveying Instructions" and this Act, in doing so, BLM is not required to perform a ground survey or place monuments along meanderlines.

Subsection (b)(1). This paragraph is intended to codify the common law doctrine of riparian ownership. Whenever BLM conveys title to land to an Alaska Native, Native Corporation or the State of Alaska which abuts or surrounds a lake, river, stream or other body of water which has been meandered, such conveyance shall vest such Native, Native corporation or the State with all the right, title, and interest of the United States, if any, in the land under such lake, river, stream or other body of water from the shore to the median line or midpoint, as the case may be. The phrase "either before or after the date of enactment of this section" is intended to clarify that the calculation of the number acres of "public lands" which have been conveyed by interim conveyance, tentative approval and patent to Alaska Natives, Native corporations and the State of Alaska in satisfaction of their respective acreage entitlements under the Alaska Native Claims Settlement Act and the Alaska Statehood Act is retroactive. The number of acres of "public lands," i.e., lands outside the meanderlines required by this Act, conveyed prior to the date of enactment of this Act must be recalulated for every Alaska Native, every Native village and regional corporation and the State based upon the criteria set forth in this Act. All right, title and interest of the United States, if any, to lands within meanderlines, and which have been previously conveyed by interim conveyance, tentative approval or patent, shall vest in the appropriate Native, Native corporation or the State without charge to the acreage entitlement of such Native, Native corporation or of the State.

(2) This paragraph ratifies the terms and conditions of the referenced memorandum of agreement between the Department of the Interior and the State of Alaska, and in particular the terms and conditions which relate to the manner, and the State of Alaska's reimbursement of the costs, of recalculating the amount of acreage conveyed to the State of Alaska prior to the effective date of the

memorandum of agreement which should have been charged against the State's acreage entitlement. In that regard, the Committee recognizes that, unlike the recalculation of the acreage previously conveyed to the State of Alaska, the number of acres of "public lands" identified pursuant to the procedures set forth in this Act which have been conveyed to Alaska Natives and Native corporations prior to the date of enactment of this Act has been, and shall continue to be, recalculated without charge to any Alaska Native or Native corporation.

Subsection (c). This subsection reenacts several provisions of the version of section 901 which has been replaced by this Act. With respect to paragraph (3), the Committee intends that costs and actual attorney's fees be awarded in every judicial action in which a Native corporation successfully defends its title to land beneath lakes, rivers, streams or other bodies of water regardless of whether such land has or has not been charged against the acreage entitlement of such corporation.

Subsection (d). This subsection reenacts the definitions included in the version of section 901 which has been replaced by this Act.

Section 2

This section recognizes that prior to the date of enactment of this Act the United States entered into a number of land exchange agreements, primarily, but not exclusively, with Native corporations. The Committee intends that the terms and conditions of those agreements be unaffected by this Act. With respect to some agreements, such matters as the navigability or nonnavigability of specific lakes, rivers, streams and other bodies of water, whether title to the land beneath such bodies of water would be conveyed to a Native corporation, and, if so, whether the acreage encompassed by such bodies of water would or would not be charged against the acreage entitlement of such corporation were questions that were specifically negotiated and agreed to by the parties, and constitute agreements, the validity of which are to be unaffected by this Act. However, if such matters were not specifically negotiated and agreed to between the parties to an agreement, then the Native, Native corporation or the State which are parties to the agreement are entitled to, and shall be afforded, the benefits of this Act, including, but not limited to, the recalculation of the number of acres of land that should have been charged against the Native's, Native corporation's or the State's acreage entitlement as a result of the agreement. Similarly, where a dispute may presently exist concerning the nature of an agreement between the parties, nothing in this Act shall be construed to resolve, judge, affect the merits, or in any way prejudice any party to the dispute. Finally, nothing in this Act precludes parties to future land exchange agreements from agreeing to specific charges against acreage entitlements or specific survey requirements.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of the cost of this measure has been provided by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 29, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 485, a bill to amend the Alaska National Interest Lands Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaska Native Corporation, as amended and ordered reported by the Senate Committee on Energy and Natural Resources, September 24, 1986.

We estimate that enactment of this bill would result in no cost to the federal government or to state or local governments. S. 485 would incorporate into law the terms of the agreement reached in 1984 between the Department of Interior and the State of Alaska. Since that time, the Bureau of Land Management has adapted its Alaskan survey methods to conform with the terms of the agreement and the methods used for all states in the continental United States. Enactment of S. 485 would not change those methods.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

EDWARD GRAMLICH
(For Rudolph G. Penner, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 485. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 485, as reported.

EXECUTIVE COMMUNICATIONS

The pertinent legislative report recieved by the Committee from the Department of the Interior setting forth executive agency recommendations relating to S. 485 is set forth below:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, August 21, 1986.

Hon. JAMES A. MCCLURE,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This responds to your request for our views on S. 485, a bill "To amend the Alaska National Interest Lands

Conservation Act of 1980 to clarify the treatment of submerged lands and ownership by the Alaskan Native Corporation."

We strongly support enactment of S. 485.

S. 485 would anemd section 901 of the Alaska National Interest Lands Conservation Act of 1980, generally referred to as ANILCA, to eliminate the provisions relating to the 6-year statute of limitations for the filing of civil actions concerning (1) the ownership by a Native corporation or Native group of a parcel of submerged land conveyed to such corporation or group pursuant to either ANILCA or the Alaska Native Claims Settlement Act of 1971 (ANCSA), or (2) a decision by the Secretary of the Interior that the water covering such parcel is not navigable; and the 7-year limitation if the interim conveyance or patent was executed before the date of enactment of ANILCA. It would also repeal other provisions of section 901.

S. 485 would add three new subsections to section 901 of ANILCA. Subsection (d) would contain two paragraphs.

Paragraph (1) would establish the requirements for, and the procedures to be used in, "meandering" lakes, rivers and streams whenever the Secretary surveys lands selected by an Alaskan Native, a Native corporation, or the State, purusant to ANCSA, the Alaska Statehood Act, or ANILCA.

Paragraph (2) of new subsection (d) would provide that whenever the Secretary, pursuant to the ANCSA, ANILCA, or the Alaska Statehood Act, converys to an Alaska Native, a Native corporation, or the State, land which abuts or surrounds a lake, river or stream which is required to be meandered, all right, title and interest of the United States, if any, in the land under such lake, river, or stream lying between uplands and the median line or midpoint, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. Paragraph (2) also would provide that the right, title and interest vested in such Native or Native Corporation shall be no greater an estate than the estate he or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

New subsection (e) would incorporate into section 901 the provisions of the March 28, 1984, Memorandum of Agreement between the Department of the Interior and the State of Alaska and ratify it as to the duties and obligations of the United States, as matter of Federal law.

New subsection (f) would provide that nothing in section 901 shall be construed to change sections 12(b)(1) and 12(b)(2) of Public Law 94-204, which pertain to certain conveyances by the Secretary to Cook Inlet Region, Incorporated.

S. 485 would amend section 901 of ANILCA to make its provisions conform to the policy adopted by the Department of the Interior and agreed to by the State of Alaska and Native corporations containing the ownership of, and chargeability for, submerged lands.

Since the passage of the Act of May 18, 1796, it has been the law that the title to lands bordering on nonnavigable streams extends to the center of the streams. Further, in 1891, in the case of *Hardin* v. *Jordan,* 140 U.S. 371, the Supreme Court decided that the title of grantees of lands bordering on nonnavigable lakes or ponds extends to the center of the lake or pond. The Department has applied these principles consistently to land conveyances in both the lower 48 States and Alaska, except as to selections by the State of Alaska under the Alaska Statehood Act and to selections by Native corporations under the Alaska Native Claims Settlement Act.

Thus, when a State or other entity, other than the State of Alaska or a Native Corporation, was entitled to select a certain amount of land which included land covered by nonnavigable waters, the grantee was not charged for the submerged lands when the acreage of the remaining entitlement was calculated. This longstanding policy is reflected in the Bureau of Land Management's (BLM) "Manual of Surveying Instructions" (Manual), which includes instructions for meandering rivers and lakes and calculating the acreage of fractional sections. The Manual provides that navigable bodies of water, as well as all lakes equal to or larger than 50 acres, and streams and rivers equal to or wider than three chains (198 feet), are to be excluded from the public lands.

Section 6 of the Alaska Statehood Act allowed the State of Alaska to select 103.35 million acres of vacant, unappropriated, unreserved public land. That Act also provided that the State took title to submerged lands beneath navigable waters that had not been reserved to the United States under the Submerged Lands Act or other law. However, section 6(g) of the Alaska Statehood Act provides that where lands selected by the State are unsurveyed, the Secretary of the Interior is to survey the exterior boundaries of the selected area and issue a patent for such selected area in terms of the exterior boundary survey. In accordance with this instruction, BLM surveyed only the perimeter of the State's selections and did not meander the submerged lands within the selected areas.

Under ANCSA, Native corporations were entitled to select 44 million acres of public lands. In this context, the Department interpreted the term "public lands" to include submerged lands beneath nonnavigable waters. A final determination as to the navigability of a body of water can only be made by a court, and such judicial determinations have never been issued on the overwhelming majority of lakes and rivers in Alaska. Thus, BLM, in its efforts to convey the lands that have been selected by the State and the Native corporations, has been required to make initial determinations as to the navigability of hundreds of lakes and rivers. If BLM found that a body of water within a Native selection is navigable, the land underlying the water body was held to belong to the State and was not charged against the Native corporation's entitlement. If the water body was found to be nonnavigable, the selected lands were conveyed to the Native corporation and charged against its entitlement—an apparent contradiction of the Department's longstanding policy in the lower 48 States. Similarly, when the State made selections of lands containing nonnavigable bodies of water, BLM charged the submerged lands against the State's entitlement.

As a result, the navigability and nonnavigability of water bodies and the chargeability of submerged land have been issues of contention since the enactment of the Alaska Statehood Act and ANCSA. In particular, the State believes that many of the submerged lands that have been conveyed to the Native corporations should have been recognized as belonging to the State. Native corporations have found it necessary to challenge the initial navigability decisions to insure that they will not be deprived of any portion of their entitlements. Further, the State and the Native corporations have long contended that the Manual should be followed when lands in Alaska are conveyed. The Native corporations have also asserted that they should not be charged for federally-owned submerged lands which they have selected.

In an attempt to resolve submerged land inequities, the involved parties negotiated a change in policy concerning the chargeability of submerged lands. That policy was published in the Federal Register of December 5, 1983, and was subsequently reiterated in a March 28, 1984, Memorandum of Understanding between the State of Alaska and the Department of the Interior, and in a final rulemaking amending the provisions of the Alaska Native Selection regulations (43 CFR 2650) that was published in the Federal Register on April 19, 1985.

The basic provisions of that policy are:

> Submerged lands beneath all water bodies shall be meandered in accordance with the principles in the Bureau of Land Management's "Manual of Surveying Instructions." Whenever feasible, photogrammetry is to be used in surveying meander lines and planimetry is to be used for acreage computations of the upland lots on plats of survey.
>
> Alaska Native corporations and the State shall not be charged for submerged lands beneath water bodies that are meandered in accordance with the new policy (i.e., in accordance with the Manual or subsequent regulations).
>
> Those beds of tidal waters which were reserved to the United States at the time of statehood and are less than 50 acres in size or three chains in width will not be meandered and will be charged against Native and State entitlements.

Implementation of this policy is having the following benefits:

> The Native corporations and the State are not receiving less land than Congress specified, since there is no charge for submerged lands that are meandered.
>
> Treatment of landowners in Alaska is consistent with the treatment of landowners in the lower 48 States.
>
> There is less likelihood that protracted litigation will occur, thus reducing delays in issuing conveyances.
>
> Since the State, the Native Corporations, and the Department of the Interior have concurred in the new policy, a major source of friction has been removed.

Although the Department's current policy concerning the chargeability of submerged lands has eliminated many of the problems associated with conveyances of selected lands in Alaska, the problem concerning navigability decisions remains unresolved. At issue are BLM's navigability decisions and their effect on hundreds of conveyances made to Native corporations and the State.

Some problems concerning navigability decisions were addressed by the Congress in section 901 of ANILCA, which established time frames and procedures for challenging such decisions. Specifically, section 901(a), as amended, provides that the ownership by a Native corporation or Native group of a parcel of submerged land conveyed to such corporation or group pursuant to either ANILCA or ANCSA, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to a judicial determination unless a civil action is filed in the United States District Court within six years after the date of the execution of the involved conveyance, if the conveyance was executed after December 2, 1980, the date of enactment of ANILCA. A 7-year statute of limitations applies if the conveyance or patent was executed before the date of enactment of ANILCA.

The original 5-year statute of limitations established by section 901(a), as originally enacted, began to run on December 2, 1985. Enactment of Public Law 99-258 extended the statute to six years. Thus, the State must either challenge all the conveyances that are subject to the 6-year statute of limitations or risk the possibility of being precluded from challenging some of the conveyances and decisions. S. 485, among other things, would repeal this provision. The United States, the State of Alaska, and the Natives have always assumed that the 12-year statute of limitations in the Quiet Title Act has always applied, and will continue to apply after the repeal of section 901(a), but in the interest of clarity we suggest this be expressly stated within the provisions of section 901 as amended by S. 485.

We favor enactment of S. 485 because it enacts into law the current policy of the Administration with regard to submerged lands in Alaska and eliminates the possibility of much litigation. However, we suggest the following amendments to the bill:

1. The title of the bill should be amended to read ". . . ownership by Alaska Native corporations and the State of Alaska"; and
2. The proposed new subsection (f) should be amended to read:

> (f) nothing in this section shall be construed to (i) change the provisions of section 12(b)(1) and 12(b)(2) of the Act of January 2, 1976 (89 Stat. 1151); (ii) change the provisions of section 506(c) of the Alaska National Interest Lands Conservation Act (94 Stat. 2409); or (iii) alter or amend any exchanges consummated among the United States, Alaska Natives, Native corporations, and the State of Alaska.

The provisions of paragraphs (i) and (ii) of subsection (f) would be required to continue the exclusion of the conveyances of submerged lands under section 506(c) of ANILCA. Paragraph (iii) would be necessary to assure that negotiated changes to entitlement will not be distrubed, thus avoiding new disputes.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. Steven Griles,
Assistant Secretary.

MINORITY VIEWS OF SENATOR METZENBAUM

I oppose this bill because it asks us to take a giant leap into the dark with respect to the fate of federal lands in Alaska, including the "National Interest Lands" we set aside a few short years ago in the Alaska National Interest Lands Conservation Act.

The bill's advocates offer a study by the state of Alaska that purports to show that only 738,000 acres of federal land would be transferred to state and native ownership if this bill is enacted. Aside from the fact that even 738,000 acres is not an insignificant amount of land, it is worth noting that the state is hardly a disinterested party and its study is not the kind of independent analysis required to justify the bill. The U.S. Fish and Wildlife Service in Alaska has found the state's study to be methodologically faulty, having been based on pre-1978 data that was incomplete when collected. Indeed, other independent analyses strongly indicate that the state's estimation methods may have been faulty and biased. In addition, the Department of Interior has refused to prepare its own assessment of the impact of this conveyance on federal lands.

In fact, other estimates of the amount of land that would be affected by this bill have varied widely. Former Secretary Watt said that the loss of federal lands through the submerged lands conveyance procedure of this bill would be between 5-7 million acres. Despite that, Secretary Watt instituted this conveyance formula administratively, without the benefit of an environmental impact statement, or even public comment. As a result of that action, two of the largest environmental groups in the nation have sued the Department of Interior and their case is now pending in the courts. That action is pending. I do not believe that Congress should moot this proceeding without far more reliable data.

Rather than proceed on such flimsy data, we should take advantage of new aerial photographic coverage by NASA of 95 percent of Alaska's land—including all land selected by the natives and the state—on a scale consistent with the topographic maps used in land conveyance determinations. These maps finally provide an adequate data base for an up-to-date and accurate impact analysis of the survey manual method for conveying submerged lands.

In summary, I believe we should proceed with caution on the land conveyance question in order to avoid needlessly compromising the public interest in retention of the federal lands in Alaska, particularly the National Interest Lands. I do not believe that Congress should even consider ratifying the implementation of this land conveyance policy until a thorough, reliable, and independent study has been completed. Such a study is now feasible and should be carried out on the basis of the current and precise data which is now available, and accurate statistical procedures.

On the question of the statute of limitation for state lawsuits challening determinations of non-navigability of water bodies, we may wish to simply extend the current deadlines, in order to avoid the flood of litigation which the state has threatened and which would be a serious burden for both the state and the natives.

HOWARD M. METZENBAUM.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 485, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

PUBLIC LAW 96-487—DEC. 2, 1980

94 STAT. 2371

TITLE I—PURPOSES, DEFINITIONS, AND MAPS

PURPOSES

SEC. 101. (a) In order to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska that contain nationally significant natural, scenic, historic, archeological, geological, scientific, wilderness, cultural, recreational, and wildlife values, the units described in the following titles are hereby established.

* * * * * * *

TITLE IX—IMPLEMENTATION OF ALASKA NATIVE CLAIMS SETTLEMENT ACT AND ALASKA STATEHOOD ACT

SUBMERGED LANDS STATUTE OF LIMITATION

[SEC. 901. (a) Notwithstanding any other provision of law, the ownership by a Native Corporation or Native Group of a parcel of submerged land conveyed to such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act, or a decision by the Secretary of the Interior that the water covering such parcel is not navigable, shall not be subject to judicial determination unless a civil action is filed in the United States District Court within five years after the date of execution of the interim conveyance if the interim conveyance was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the interim conveyance was executed on or before the date of enactment of this Act. If a parcel of submerged land was conveyed by a patent rather than an interim conveyance, the civil action described in the preceding sentence shall be filed within five years after the date of execution of the patent if the patent was executed after the date of enactment of this Act, or within seven years after the date of enactment of this Act if the patent was executed on or before the date of enactment of this Act. The civil action described in this subsection shall be a de novo determination of the ownership of the parcel which is the subject of the action.

[(b) No agency or board of the Department of the Interior other than the Bureau of Land Management shall have authority to determine the navigability of water covering a parcel of submerged land selected by a Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act unless a determination by the Bureau of Land Management that the water covering a parcel of submerged land is not navigable was validly appealed to such agency or board prior to the date of enactment of this Act. The execution of an interim conveyance or patent (whichever is executed first) by the Bureau of Land Management conveying a parcel of submerged land to a Native Corporation or Native Group shall be the final agency action with respect to a decision by the Secretary of the Interior that the water covering such parcel is not navigable, unless such decision was validly appealed prior to the date of enactment of this Act to an agency or board of the Department of the Interior other than the Bureau of Land Management.

[(c) If the court determines that a parcel of submerged land which is the subject of a civil action described in subsection (a) is owned by the Native Corporation or Native Group to which it was conveyed pursuant to the Alaska Native Claims Settlement Act or this Act, each defendant Native Corporation and Native Group shall be awarded a money judgment against the plaintiffs in an amount equal to its costs and attorney's fees, including costs and attorney's fees incurred on appeal.

[(d) No Native Corporation or Native Group shall be determined to have been conveyed its acreage entitlement under the Alaska Native Claims Settlement Act until—

[(1) the statutes of limitation set forth in subsection (a) have expired with respect to every parcel of submerged land conveyed to such Corporation or Groups; and

[(2) a final judgment or order not subject to an appeal has been obtained in every civil action filed pursuant to subsection (a).

[(e)(1) Whenever a parcel of submerged land to be conveyed to a Native Corporation or Native Group is located outside the boundaries of a conservation system unit such Corporation or Group and the State of Alaska may mutually agree that such parcel may be selected by and conveyed to the State under the provisions of section 6(b) of the Alaska Statehood Act.

[(2) In any instance in which the State could have selected a parcel of submerged land pursuant to an agreement between the State and a Native Corporation or Native Group pursuant to paragraph (1) if such parcel had not previously been conveyed to such Corporation or Group, such Corporation or Group is authorized to reconvey such parcel to the Secretary, and the Secretary shall accept such reconveyance. If the surface estate and subsurface estate of such parcel are owned by different Native Corporations or Native Groups, every Corporation and Group with an interest in such parcel shall reconvey its entire interest in such parcel to the Secretary.

[(3) In any agreement made between a Native Corporation or Native Group and the State of Alaska pursuant to paragraph (1), and in any reconveyance executed by a Native Corporation or Native Group pursuant to paragraph (2), each affected Corporation or Group shall disclaim its interest in the parcel which is the subject of the agreement or reconveyance. If such parcel underlies a lake having a surface area of fifty acres or greater or a stream having a width of three chains or greater, the Secretary shall determine the acreage contained in the parcel. If such parcel underlies a lake having a surface area of less than fifty acres or a stream having a width of less than three chains, the Secretary, the State, and the affected Native Corporation or Native Group shall determine the acreage contained in the parcel by mutual agreement. The affected Native Corporation or Native Group shall receive replacement lands in an amount equal to the acreage of the parcel as determined by the processes set forth in this paragraph.

[(4) Upon receipt by the Secretary of an agreement executed pursuant to paragraph (1) or a reconveyance executed pursuant to paragraph (2), the parcel which is the subject of the agreement or reconveyance shall be deemed vacant, unappropriated, and unreserved public land available for selection by the State pursuant to section 6 of the Alaska Statehood Act, and the State is authorized to file a land selection application for such parcel pursuant to section 6(b) of the Alaska Statehood Act. The acreage within such parcel shall be charged against the State's land entitlement. If the water covering a parcel of submerged land selected by or conveyed to the State pursuant to this subsection is later determined (without regard to the statutes of limitation contained in this section) by a court of competent jurisdiction to be navigable and title to such parcel to be vested in the State pursuant to section 6(m) of the Alaska Statehood Act, such selection or conveyance shall not diminish the State's land entitlement under section 6(b) of the Alaska Statehood Act, nor shall such judicial determination of navigability affect the land entitlement of any Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act. Land selections made by the State pursuant to this subsection shall not be subject to the size limitations of section 6(g) of the Alaska Statehood Act or this Act. Notwithstanding the survey requirements of section 6(g) of the Alaska Statehood Act and section 13 of the Alaska Native Claims Settlement Act, no ground survey or monumentation shall be required on any parcel selected by and conveyed to the State or excluded from a conveyance to any Native Corporation or Native Group pursuant to this subsection.

[(5) Any Native Corporation or Native Group which is entitled to receive conveyance of replacement acreage in lieu of acreage within a parcel of submerged land relinquished or reconveyed pursuant to this subsection shall receive conveyance of such replacement acreage from among existing selections made by such Corporation or Group pursuant to the Alaska Native Claims Settlement Act or this Act. If such selections are insufficient to fulfill the acreage entitlement of such Corporation or Group pursuant to the Alaska Native Claims Settlement Act, the provisions of section 1410 shall apply to such Corporation or Group, but no land within the boundaries of a conservation system unit shall be withdrawn for such Corporation or Group pursuant to section 1410 unless such land was withdrawn under section 11(a) of the Alaska Native Claims Settlement Act. Any replacement acreage conveyed to a Native Corporation or Native Group from lands withdrawn pursuant to section 1410 shall be subject to the provisions of sections 12, 14, 16, 17, and 22 of the Alaska Native Claims Settlement Act.

[(f) The procedures and statutes of limitation set forth in this section shall not apply to administrative or judicial determinations of the navigability of water covering a parcel of submerged land other than a parcel conveyed to a Native Corporation or Native Group pursuant to the Alaska Native Claims Settlement Act or this Act.

[(g) As used in this section, the terms "navigable" and "navigability" mean navigable for the purpose of determining the title to lands beneath navigable waters, as between the United States and the several States, pursuant to the Submerged Lands Act of 1953 (67 Stat. 29), and section 6(m) of the Alaska Statehood Act.

[(h) Notwithstanding any other provision of law, any civil action contesting the legality or authority of the United States to legislate on the subject matter of this section shall be barred unless the complaint is filed within one year after the date of enactment of this Act. The purpose of this limitation on suits is to ensure that, after the expiration of a reasonable period of time, the right, title, and interest of Native Corporations and Native Groups in submerged lands conveyed to them under the Alaska Native Claims Settlement Act and this Act will vest with certainty and finality and may be relied upon by such Corporations and Groups and all other persons in their relations among themselves and with the State and the United States.]

SEC. 901. (a)(1) Except as provided in paragraph (2), whenever the Secretary surveys land selected by a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act, lakes, rivers, and streams shall be meandered in accordance with the principles in the Bureau of Land Management, "Manual of Surveying Instructions" (1973).

(2) If title to the lands beneath navigable waters of a lake less than fifty acres in size or a river or stream less than three chains in width did not vest in the State pursuant to the Submerged Lands Act, such lake, river, or steam shall not be meandered.

(3) The Secretary is not required to determine the navigability of a lake, river, or stream which because of its size or width is required to be meandered or to compute the acreage of the land beneath such lake, river, or stream or to describe such land in any conveyance document.

(4) Nothing in this subsection shall be construed to require ground survey or monumentation of meanderlines.

(b)(1) Whenever, either before or after the date of enactment of this section, the Secretary conveys land to a Native, a Native Corporation, or the State pursuant to the Alaska Native Claims Settlement Act, the Alaska Statehood Act, or this Act which abuts or surrounds a meanderable lake, river, or stream, all right, title, and interest of the United States, if any, in the land under such lake, river, or stream lying between the uplands and the median line or midpoint, as the case may be, shall vest in and shall not be charged against the acreage entitlement of such Native or Native Corporation or the State. The right, title, and interest vested in a Native or Native Corporation shall be no greater an estate than the estate he

or it is conveyed in the land which abuts or surrounds the lake, river, or stream.

(2) The specific terms, conditions, procedures, covenants, reservations, and other restrictions set forth in the document entitled, "Memorandum of Agreement between the United States Department of the Interior and the State of Alaska" dated March 28, 1984, signed by the Secretary and the Governor of Alaska and submitted to the Committee on Interior and Insular Affairs of the House of Representatives, and the Committee on Energy and Natural Resources of the Senate, are hereby incorporated in this section and are ratified as to the duties and obligations of the United States and the State, as a matter of Federal law.

(c)(1) The execution of an interim conveyance or patent, as appropriate, by the Bureau of Land Managmenet which conveys an area of land selected by a Native or Native Corporation which includes, surrounds, or abuts a lake, river, or stream, or any portion thereof, shall be the final agency action with respect to a decision of the Secretary of the Interior that such lake, river, or stream, is or is not navigable, unless such decision was validly appealed to an agency or board of the Department of the Interior on or before December 2, 1980.

(2) No agency or board of the Department of the Interior other than the Bureau of Land Management shall have authority to determine the navigability of a lake, river, or stream within an area selected by a Native or Native Corporation pursuant to the Alaska Native Claims Settlement Act or this Act unless a determination by the Bureau of Land Management that such lake, river, or stream, is or is not navigable, was validly appealed to such agency or board on or before December 2, 1980.

(3) If title to land conveyed to a Native Corporation pursuant to the Alaska Native Claims Settlement Act or this Act which underlies a lake, river, or stream is challenged in a court of competent jurisdiction and such court determines that such land is owned by the Native Corporation, the Native Corporation shall be awarded a money judgment against the plaintiffs in an amount equal to its costs and attorney's fees, including costs and attorney's fees incurred on appeal.

(d) For the purposes of this section, the terms "navigable" and "navigability" means navigable for the purpose of determining title to lands beneath navigable waters, as between the United States and the several States pursuant to the Submerged Lands Act and section 6(m) of the Alaska Statehood Act.

STATUTE OF LIMITATIONS

SEC. 902. (a) Except for administrative determinations of navigability for purposes of determining ownership of submerged lands under the Submerged Lands Act, a decision of the Secretary under this title or the Alaska Native Claims Settlement Act shall not be subject to judicial review unless such action is initiated before a court of competent jurisdiction within two years after the day the Secretary's decision becomes final or the date of enactment of this Act, whichever is later: *Provided,* That the party seeking such review shall first exhaust any administrative appeal rights.

(b) Decisions made by a Village Corporation to reconvey land under section 14(c) of the Alaska Native Claims Settlement Act shall not be subject to judicial review unless such action is initiated before a court of competent jurisdiction within one year after the date of the filing of the map of boundaries as provided for in regulations promulgated by the Secretary.

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